



## **FACTUAL HISTORY**

On February 29, 2012 appellant filed a traumatic injury claim alleging that on February 19, 2012 she felt a pull in her lower back while lifting a tray out of the postal container (postcon).<sup>2</sup> She stopped work on February 22, 2012.

In a March 3, 2012 letter, Allison Hassett, a health and resource management specialist for the employing establishment, controverted the claim alleging that appellant was out sick the entire week before the alleged February 19, 2012 incident. She also noted that appellant did not report the injury until February 28, 2012 and did not submit any medical evidence demonstrating a causal relationship between the alleged February 19, 2012 incident and her lumbar condition.

In a February 22, 2012 initial evaluation report, Dr. Cecily Anto, a Board-certified neurologist, stated that she examined appellant for increasing low back pain after she lifted heavy trays weighing about 50 pounds at work on February 19, 2012. She related that over the last two days appellant experienced severe spasms and low back pain radiating into the right hip and anterior thigh with spasms in the right thigh muscles. Dr. Anto reviewed appellant's history and conducted an examination. She reported that appellant's deep tendon reflexes were symmetric at 2+ bilaterally in both upper and lower extremities. Cervical range of motion was limited and painful and lumbar flexion had severe spasm of the lumbar spine. Straight leg raise testing was not tested. Dr. Anto reported that appellant had a work-related injury with severe lumbar spasm.

In a February 22, 2012 state workers' compensation form, Dr. Anto noted the February 19, 2012 work incident and stated that she had previously treated appellant for a cervical disc herniation since 2004. Upon examination she observed pain in appellant's right leg and stiffness in the back and hip. Dr. Anto reported restricted range of motion in appellant's lumbar flexion and right lumbar paraspinal muscle spasms. She diagnosed lumbago and muscle spasm. Dr. Anto checked "yes" that the incident described was the cause of appellant's injury.

In February 27 and March 5, 2012 reports, Dr. Anto related appellant's complaints of severe low back pain since a February 19, 2012 injury and noted that she was unable to work because she could not sit or stand comfortably. Reflexes were +2 symmetrically in bilateral upper and lower extremities and cervical range of motion was full and not painful. Dr. Anto reported that appellant's lumbar range of motion was limited at 75 degrees. Straight leg raise testing was negative at 90 degrees bilaterally. Dr. Anto stated that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed a disc herniation at L2-3, L4-5 and right sided disc protrusion in addition to L4-5 disc bulge. She diagnosed severe right lumbar pain with spasm and multiple lumbar spine disc herniations with radicular symptoms.

In an unsigned March 2, 2012 MRI scan report, an unknown provider observed right foraminal/lateral disc protrusion at L2-3 resulting in mild to moderate right foraminal narrowing, mild right L3-4 foraminal narrowing with small right foraminal disc protrusion and milder degenerative changes.

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<sup>2</sup> The record reveals that appellant filed two previous traumatic injury claims for January 29, 2007 (File No. xxxxxx443) and December 14, 2008 (File No. xxxxxx015) injuries.

By letter dated March 12, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional evidence to establish that the February 19, 2012 incident occurred as alleged and that she sustained a diagnosed condition as a result of the alleged incident.

In a March 12, 2012 physical therapy evaluation report, Dr. Lisa Grieco, a physical therapist, related appellant's complaints of lower back pain with radicular symptoms down the right lower extremity. She conducted an examination and reported that appellant had signs and symptoms consistent with lumbar radiculopathy and lumbosacral sprain/strain. Dr. Grieco advised appellant to undergo physical therapy treatment approximately two to three times a week. She submitted various physical therapy treatment notes.

In a March 21, 2012 report, Dr. Anto stated that appellant continued to have low back pain after a February 19, 2012 work injury and had difficulty ambulating due to the pain. Upon examination, she observed symmetrical motor strength and graded 5/5 in all extremities except for weakness in the right lower extremity. Dr. Anto also reported tenderness and spasm of the lumbar spine and right sacroiliac (SI) joint and gluteal muscles. Lumbar spine was flexed to 80 degrees and straight leg raise testing was negative at 90 degrees bilaterally. Dr. Anto diagnosed multiple lumbar disc herniations with acute right sided L3-4 radiculopathy and chronic bilateral S1 radiculopathy.

In a March 26, 2012 statement, appellant related that on February 19, 2012 she felt a pull in her lower back when she lifted a tray of mail weighing approximately 50 to 60 pounds. She explained that she did not report the injury right away because she thought it was just a pulled muscle and would be fine with rest. Appellant stated that when the pain in her back increased she sought medical treatment from Dr. Anto on February 22 and 27 and March 5 and 12, 2012. On February 28, 2012 she called the employing establishment to inform them of her injury and was advised to come into work to fill out a Form CA-1. Appellant reported that she filed a previous traumatic injury claim for a February 6, 2008 incident when she fell over a rail at work.

In an April 3, 2012 electromyogram (EMG) and nerve conduction velocity (NCV) report, Dr. Anto noted the February 19, 2012 work injury and appellant's complaints of continued low back pain radiating into her right lower extremity. Upon examination, she observed decreased pinprick in the right L3-4 distribution. Dr. Anto reported that appellant had acute right-sided L3-4 radiculopathy and that she could not rule out bilateral S1 radiculopathy.

In a decision dated April 17, 2012, OWCP denied appellant's claim. It accepted that the February 19, 2012 incident occurred as alleged and that she sustained a diagnosed lumbar disc herniation and lumbar radiculopathy but denied the claim finding insufficient medical evidence to establish that her diagnosed condition was causally related to the accepted incident.

On May 7, 2012 appellant requested a review of the written record.

In a May 7, 2012 note, Dr. Anto stated that on February 19, 2012 appellant injured her low back when she lifted a heavy 50-pound tray at work, which caused her low back pain and lumbar spine disc herniations and bulges at L2-3, L3-4 and L4-5.

In progress notes dated from May 7 and July 2, 2012, Dr. Anto stated that appellant's intermittent low back pain continued to improve following a February 19, 2012 workers' compensation injury and noted that she began working part-time light duty. Sensory examination revealed normal sensation to pinprick in all extremities and decreased sensation in the right L3-4 distribution. Reflexes are +2 symmetrically in bilateral upper and lower extremities except for absent right Achilles. Dr. Anto observed mild tenderness over lumbar spine and lumbar paraspinals. Cervical range of motion was full and not painful and lumbar flexion was limited to 75 degrees. Straight leg raise testing was negative at 90 degrees bilaterally. In the May 7, 2012 report, Dr. Anto reported that appellant had acute right L3-4 and multiple lumbar disc herniations. She opined that both of these conditions were related to the February 19, 2012 work injury.

In May 7 and June 5, 2012 duty status reports, Dr. Anto related that on February 19, 2012 appellant felt pain in her lower back when she was lifting trays out of a postcon. She authorized appellant to return to light duty four hours per day.

Appellant submitted more physical therapy reports dated from April 18 to May 11, 2012.

By decision dated August 2, 2012, OWCP denied modification of the April 17, 2012 decision finding that the evidence was insufficient to establish that appellant's back condition was causally related to the February 19, 2012 employment incident.

In progress notes dated August 13, 2012 and January 21, 2013, Dr. Anto related that appellant continued to have intermittent pain in her right lumbar spine after a February 19, 2012 work injury. Upon examination, she observed tenderness in the lumbar spine in the right SI joint. Sensory examination demonstrated normal sensation to pinprick in all extremities. Dr. Anto reported that reflexes were +2 symmetrically in bilateral upper and lower extremities. Cervical range of motion was full but not painful. Lumbar flexion was to 90 degrees and straight leg raise testing was negative at 90 degrees bilaterally. Dr. Anto diagnosed multiple lumbar disc herniations and acute right L3-4 radiculopathy related to the February 19, 2012 work injury. She recommended appellant continue working part-time light duty. Dr. Anto provided work restrictions for appellant and submitted work restriction forms.

Appellant submitted physical therapy reports dated June 7 to August 15, 2012.

In an April 25, 2013 report, Dr. Anto stated that appellant had been a patient in her office since November 24, 2004. She related that on February 22, 2013 appellant consulted her for evaluation of an acute onset of low back pain after she lifted a heavy tray weighing approximately 50 pounds at work on February 19, 2012. Dr. Anto reported that, at the time of examination, appellant was bent over forward in the lumbar area because of severe pain and demonstrated abnormal motor examination with right hip flexor weakness. She also observed severe spasm of appellant's lumbar spine with anteriorly flexed posturing. Dr. Anto described her treatment of appellant and provided findings on examination. She reported that a March 2, 2013 MRI scan of the spine revealed disc herniation at L2-3 with right foraminal disc protrusion and L3-4 right foraminal disc protrusion resulting in mild right foraminal narrowing at L4-5 diffuse disc bulge. Dr. Anto also noted that an April 3, 2012 EMG/NCV study of the lower

extremities demonstrated acute denervation changes of profuse nature which was consistent with an L3-4 radiculopathy.

Dr. Anto diagnosed acute lumbar disc herniations with right-sided radicular symptoms. She explained that on February 19, 2012 appellant experienced acute onset of low back pain radiating into the right lower extremity and severe flexor spasm. Dr. Anto opined that there was a direct causal relationship between the February 19, 2012 incident when appellant felt a pull in the low back after she lifted a tray weighing 50 pounds and the increasing radicular pains and weakness. She explained that at the time of appellant's initial visit appellant had severe lumbar paraspinal muscle spasm and that her spine was in an anteriorly flexed posture. Dr. Anto reported that there was no mention in the MRI scan report that appellant's disc herniations were degenerative in nature and that it most likely resulted from the incident on February 19, 2012. She noted that she had treated appellant since 2004 for cervical radiculopathy and pointed out that she did not complain of any low back pain until after the February 19, 2012 work incident. Dr. Anto explained that for these reasons it was her opinion that the February 19, 2012 incident at work was causally responsible for the lumbar disc herniations and severe acute right lumbar radiculopathy.

In a May 6, 2013 letter, appellant's counsel submitted a request for reconsideration. He alleged that the medical evidence submitted by Dr. Anto established a causal relationship between appellant's diagnosed lumbar condition and the February 19, 2012 employment incident. Counsel stated that Dr. Anto's April 25, 2013 report included a complete and accurate history, the results of objective testing and an opinion, supported by medical explanation and rationale, regarding appellant's work-related disability.

In July 2 and August 13, 2012 reports, Dr. Anto noted appellant's February 19, 2012 employment incident and related her complaints of intermittent pain radiating to her right lower extremity. She observed tenderness over the lumbar spine and right SI joint and gluteal muscles. Sensory examination showed normal sensation to pinprick in all extremities except for decreased in the right L3-4 distribution. Reflexes were +2 symmetrically in bilateral upper and lower extremities. Lumbar flexion was 90 degrees. Straight leg raise testing was negative at 90 degrees bilaterally. Dr. Anto diagnosed multiple lumbar disc herniations with acute right L3-4 radiculopathy.

In a decision dated July 31, 2013, OWCP denied modification of the August 2, 2012 decision finding that the medical evidence failed to establish that appellant's back condition was causally related to the February 19, 2012 employment incident.

#### **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

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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).

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>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>10</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>11</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>12</sup>

### ANALYSIS

Appellant alleges that on February 19, 2012 she sustained an injury to her lower back when she carried heavy mail trays at work. OWCP accepted that the February 19, 2012 incident occurred as alleged and that she has a diagnosed back condition but denied the claim finding insufficient medical evidence to establish that her back condition was causally related to the accepted incident. The Board finds that this case is not in posture for decision as to whether appellant sustained a back condition as a result of the February 19, 2012 employment incident.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident. As part of this burden, the

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<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).

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

<sup>10</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

employee must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>13</sup> However, it is well established that proceedings under FECA are not adversarial in nature and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>14</sup>

Appellant received medical treatment from Dr. Anto from February 22, 2012 to August 13, 2013 for complaints of increasing low back pain radiating into the right hip and anterior thigh hip after she lifted heavy trays at work on February 19, 2012. Dr. Anto stated that she had previously treated appellant for cervical radiculopathy beginning in November 2004 and that she had never complained of low back pain until after the February 19, 2012 work incident. Upon examination, she observed mild tenderness over lumbar spine and right SI joint and severe spasm of the lumbar spine with anteriorly flexed posturing. Lumbar range of motion was limited to 75 degrees and straight leg raise testing was negative at 90 degrees bilaterally. In a March 5, 2012 report, Dr. Anto reported that an MRI scan of the lumbar spine revealed a disc herniation at L2-3, L4-5 and right sided disc protrusion in addition to L4-5 disc bulge. She also noted that an April 3, 2012 EMG/NCV study of the lower extremities demonstrated acute denervation changes of profuse nature which was consistent with an L3-4 radiculopathy. Dr. Anto diagnosed multiple lumbar disc herniations with acute right sided L3-4 radiculopathy. In a May 7, 2012 report, she opined that both of these conditions were related to the February 19, 2012 work injury. In an April 25, 2013 report, Dr. Anto again opined that there was a direct causal relationship between the February 19, 2012 incident and appellant's lumbar condition. She related that at the time of appellant's initial visit she observed severe lumbar paraspinal muscle spasm and weakness. Dr. Anto noted that there was no mention in the MRI scan report that appellant's disc herniations were degenerative in nature and that it most likely resulted from the incident on February 19, 2012. She explained that for these reasons it was her opinion that the February 19, 2012 incident at work was causally responsible for the lumbar disc herniations and severe acute right lumbar radiculopathy.

The Board notes that while none of Dr. Anto's reports are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury. Dr. Anto accurately described that on February 19, 2012 appellant felt a pull in her back when she lifted heavy mail trays at work. She treated appellant shortly thereafter and provided findings based on diagnostic testing and physical examination. Dr. Anto noted that appellant did not have a history of lumbar complaints and that the MRI scan showed no evidence that appellant's disc herniations were degenerative in nature. She opined that it most likely resulted from the incident on February 19, 2012. Although Dr. Anto did not provide a fully-rationalized medical opinion on causal relationship explaining how lifting a heavy tray caused appellant's lumbar condition, she provided a consistent opinion based on examination findings and an accurate factual and medical background that appellant's current back condition was caused by the February 19, 2012 employment incident. While these reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her multiple lumbar disc

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<sup>13</sup> *Supra* note 5.

<sup>14</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

herniations and L3-4 radiculopathy and accepted incident and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>15</sup>

On remand, OWCP should prepare a statement of accepted facts and refer appellant to an appropriate medical specialist for a detailed opinion as to whether her current lumbar condition was causally related to the February 19, 2012 work event. Following this and any other further development as deemed necessary, it shall issue an appropriate merit decision on appellant's claim.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision and requires additional development of the medical evidence by OWCP.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: February 20, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *R.O.*, Docket No. 13-626 (issued June 18, 2013); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).