

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

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R.C., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS HEALTH ADMINISTRATION, )  
San Juan, PR, Employer )

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**Docket No. 13-408**  
**Issued: January 10, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 10, 2012 appellant filed a timely appeal from the October 2, 2012 Office of Workers' Compensation Programs' (OWCP) decision, which found that she did not sustain an injury in the performance of duty. 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 her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 27, 2012.

**FACTUAL HISTORY**

On April 16, 2012 appellant, then a 60-year-old nurse, filed a traumatic injury claim alleging that on March 27, 2012 she sustained an injury to her sacral area, coccyx and gluteus

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

while at work. When she was going to sit down in her chair, when it rolled back and moved and she fell to the floor. Appellant stopped work on March 28, 2012. The employing establishment noted that she was in the performance of duty.

By letter dated April 25, 2012, OWCP advised appellant that additional factual and medical evidence was needed. It requested that she provide an explanation with regards to the date of the injury and the date she reported it to her supervisor. OWCP also explained that a physician's opinion was crucial to appellant's claim and allotted her 30 days to submit the requested information.

OWCP received a March 27, 2012 incident report in which the employing establishment described the incident in which appellant fell.

In a March 27, 2012 report, Dr. Wanda L. Baez-Silva, a family practitioner, noted that appellant fell down from a sitting position to the floor, when she tried to sit in her chair. She provided findings which included low back tenderness in the sacrum and coccyx. Dr. Silva checked the box "yes" in response to whether she believed the condition was caused or aggravated by an employment activity.

In a March 27, 2012 report, Dr. Julia Martinez-Rivera, a Board-certified diagnostic radiologist, diagnosed paravertebral muscle spasm, mild irregularity at the lower coccygeal segment, suggesting a small incomplete fracture.

In an April 2, 2012 magnetic resonance imaging (MRI) scan, Dr. Maruja Santiago, a Board-certified diagnostic radiologist, diagnosed: mild spondylosis and disc desiccation of the lumbar spine; straightening of the lordosis; bulging disc, facet and ligamentum hypertrophy at L5-S1 without herniation; or central canal stenosis; bulging disc with flattening of the thecal sac and mild bilateral facet hypertrophy at L4-5 without herniation or nerve root compromise.

Dr. Laura C. Plaza Carrillo, a general practitioner, provided disability certificates dated March 30 to April 20, 2012. She diagnosed a coccyx fracture and status post-trauma. Dr. Carrillo advised that appellant could return to work on May 7, 2012. In a May 1, 2012 duty treatment note, she noted that appellant had a chronic lumbar condition which was static until she fell from her chair at her job. Appellant developed a coccyx fracture and severe paracentral muscle spasm. Dr. Carrillo advised that appellant was unable to drive more than 15 minutes and her job was 30 minutes away. She placed appellant on rest from March 30 to May 4, 2012.

By decision dated May 29, 2012, OWCP denied appellant's claim finding that she did not establish an injury as alleged. It found that the evidence did not demonstrate that a specific event, incident or exposure occurred at the time, place and in the manner alleged. OWCP noted that appellant alleged that the injury occurred on March 27, 2012 but that she did not report it to her supervisor until April 16, 2012 and did not explain her delay.

On June 22, 2012 appellant requested reconsideration. She stated that she landed on her gluteus and injured her sacrum and coccyx region. Appellant explained that her chair had wheels without safety locks. In a July 6, 2012 statement, she noted that her workstation was comprised of a desk and a chair with wheels and no floor mat. The wheels to the chair did not have a brake system. Appellant also explained that the floors were regularly waxed and as a result, on

March 27, 2012, she had an accident when she tried to sit down at her desk. She noted that she injured her tailbone and it caused her pain. Appellant also requested anti-slip floor mats and new chairs with brakes on their wheels.

On July 12, 2012 OWCP received appellant's undated responses to its request for additional information. Appellant explained that she immediately notified her supervisor, Belen Rivera, of the accident on March 27, 2012. She noted that there were problems with the electronic signature and not being able to sign. Appellant also indicated that her documents were sent to her duty station at "Guayama CBOC" by internal mail and she was not notified that her documents were sent to the wrong address.

In a March 27, 2012 treatment note, Dr. Baez-Silva noted that appellant fell down from sitting position in the floor, when she tried to sit in her chair. She advised that appellant had paravertebral muscle spasm and mild irregularity at the lower coccygeal segment, suggesting small incomplete fracture. Dr. Baez-Silva assessed trauma in the coccyx. In a May 1, 2012 duty status report, Dr. Carrillo advised that appellant fell on the floor on March 27, 2012 and had edema in the sacral, coccyx and lumbar area. She indicated that appellant could return to work. OWCP also received a copy of the April 2, 2012 MRI scan of the lumbar spine read by Dr. Santiago.

By decision dated October 2, 2012, OWCP modified the May 29, 2012 decision to reflect that the claimed incident occurred as alleged. However, it found that the medical evidence did not support that a medical condition was caused by the work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA<sup>3</sup> and that an injury was sustained in the performance of duty.<sup>4</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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 the fact of injury has been established. 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>6</sup> In some traumatic injury cases, this

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.<sup>9</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that she sustained injury on March 27, 2012, when she attempted to sit in her chair. It moved and she fell to the floor. The evidence supports that the incident occurred as alleged.

The Board finds that the medical evidence of record, while not sufficient to discharge appellant's burden of proof, is sufficient to require further development.

Dr. Baez-Silva treated appellant on the date of the accepted incident. She noted that appellant fell from a sitting position to the floor, when she tried to sit in a chair. On examination, Dr. Baez-Silva noted low back tenderness in sacrum and coccyx and checked the box "yes" in response to whether she believed the condition was caused or aggravated by an employment activity. Dr. Carrillo diagnosed a coccyx fracture following trauma and advised that appellant had a chronic lumbar condition which was static until she fell from her chair at work. While the reports are not fully rationalized, they are consistent in supporting that appellant sustained an employment-related coccyx condition. Moreover, the medical evidence was not reviewed by an OWCP medical adviser.

Proceedings under FECA are not adversarial in nature nor were OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup> While Dr. Baez-Silva's and Dr. Carrillo's reports do not provide sufficient rationale to discharge appellant's burden of proof that the March 27, 2012 incident caused a low back injury the reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>11</sup>

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<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *See id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to the appropriate specialist for an evaluation and a rationalized medical opinion regarding the cause of her condition. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

On appeal, appellant made several arguments in support of her claim. However, in light of the Board's disposition to remand her claim, it is premature to address her arguments at this time.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2012 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: January 10, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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