

FACTUAL HISTORY

On September 28, 2009 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back on September 4, 2009 while removing dividers out of trays.

In a series of reports, Reagan Barry, a physician assistant, indicated that appellant pulled something in her lower right back on September 4, 2009 and diagnosed acute low back pain. On October 11, 2013 she diagnosed sciatica.

In an October 7, 2013 report, Dr. John Rhodes, a Board-certified family practitioner, diagnosed sciatica.

On October 27, 2013 Dr. Jennifer Abler, a Board-certified family practitioner, indicated that appellant was seen for an initial evaluation of an existing diagnosis of acute sciatica and presented with complaints of back pain, which seemed worse after a recent surgery and was being exacerbated by carrying a mailbag.

An electromyography and nerve conduction studies (EMG/NCS) dated December 10, 2013 was “normal and [did] not support clinical suspicions of a neuromuscular process.”

On June 12, 2014 appellant filed a claim for a recurrence.³

In a June 4, 2014 report, Dr. Rhodes indicated that appellant was “initially diagnosed and treated for sciatica in 2009 which originated from her employment.” He explained that sciatica is pain produced by an irritation of the sciatic nerve. Dr. Rhodes opined that an acute exacerbation of appellant’s sciatica was “directly related to carrying heavy mail satchels from her workplace.” He indicated that he reviewed the reports from Ms. Barry and “completely concur[red] with her responses.”

In a July 7, 2014 letter, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical evidence. It afforded her 30 days to submit additional evidence and respond to its inquiries.

By decision dated August 8, 2014, OWCP accepted that the September 4, 2009 incident occurred as alleged but denied appellant’s claim finding that she failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that she had not established fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

³ Appellant also filed a claim for a schedule award on June 11, 2014. There is no final decision of record relative to this claim.

⁴ 5 U.S.C. § 8101 *et seq.*

States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury⁵ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS

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

OWCP accepted that appellant was removing dividers out of trays in the performance of duty on September 4, 2009. It denied her claim, however, on the basis that the evidence failed to establish a medical diagnosis in connection with the injury or events.

In an October 7, 2013 report, Dr. Rhodes diagnosed sciatica. On June 4, 2014 he indicated that appellant was “initially diagnosed and treated for sciatica in 2009 which originated from her employment.” Dr. Rhodes opined that an acute exacerbation of appellant’s sciatica was “directly related to carrying heavy mail satchels from her workplace.” He indicated that he reviewed the reports from Ms. Barry and “completely concur[red] with her responses.” Although these reports do not explain how the employment incident caused the diagnosed conditions, they strongly suggest and support a relationship between the employment incident

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* See also *Gary J. Watling*, 52 ECAB 278 (2001).

and appellant's back condition. The reports are also consistent with the factual histories provided by appellant and Ms. Barry.⁹

The Board finds that, while the reports from Dr. Rhodes are not completely rationalized, they are consistent in indicating that appellant sustained a back condition and are not contradicted by any substantial medical or factual evidence of record.¹⁰ Although the reports are not sufficient to meet appellant's burden of proof to establish a claim, it raises an uncontroverted inference between her back condition and the employment incident and, thus, they are sufficient to require OWCP to further develop the medical evidence and the case record.¹¹

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹² While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.¹³ Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's condition is causally related to the employment incident and a *de novo* decision on whether she sustained an injury in the performance of duty on September 4, 2009, as alleged.

CONCLUSION

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

⁹ The Board notes that the reports from Ms. Barry, a physician assistant, do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment. See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹⁰ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹¹ *Id.*

¹² See *Vanessa Young*, 55 ECAB 575 (2004).

¹³ See *Richard E. Simpson*, 55 ECAB 490 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: August 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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