

up a drip oil pan and felt a twinge in his lower back. He stated that he was able to finish his shift that day, but that the pain got progressively worse during the week.

In a work status report dated July 25, 2013, Dr. Eduardo A. Borquez, Board-certified in emergency medicine, stated that appellant should be off work from July 25 through 29, 2013.

In a work status report dated July 31, 2013, Dr. Daniel G. Wallace, a Board-certified internist, stated that appellant should be off work from August 1 through 8, 2013 and that he could return to work on August 9, 2013.

In a progress report dated July 31, 2013, Dr. Wallace diagnosed appellant with chronic low back pain.

On August 7, 2013 Dr. Truong D. Nguyen, Board-certified in preventative medicine, diagnosed appellant with lumbar radiculopathy and back pain. He stated that appellant's symptoms had been present since July 20, 2013, when he was finishing a 72-hour shift at the employing establishment, reached down to pick up a pan, and experienced acute, sharp, excruciating pain. Dr. Nguyen noted that appellant had a history of lumbar disc herniation followed by three epidural steroid injections. He stated, "Findings and diagnosis are consistent with history of injury, and in my opinion the condition is work related, based on the history provided by the patient." Dr. Nguyen included the results of an x-ray of appellant's lumbar spine taken in July 2013 in his report, which found normal height and alignment of vertebral bodies; no evidence of fracture or osseous lesion; and a narrowing of the disc space at L4-5 consistent with degenerative disc disease.

In a work status report dated August 7, 2013, Dr. Nguyen stated that appellant should be off work from August 7 through 22, 2013. On August 22, 2013 he stated that appellant should be off work from August 22 through 29, 2013.

In an attending physician's report dated August 22, 2013, Dr. Richard H. Chen, Board-certified in emergency medicine, diagnosed appellant with lumbago. He noted that appellant gave a history of injury of bending over to pick up an oil drip pan when he felt a twinge in his lower back. Appellant stated that he finished his shift, but felt intense pain in his lower back on the next day. Dr. Chen referred to Dr. Nguyen's August 7, 2013 report on the determination of whether appellant's condition resulted from an employment activity. He noted that appellant had a history of chronic low back pain and lumbar disc herniation.

In progress notes dated August 23, 2013, Dr. Nguyen diagnosed appellant with lumbar radiculopathy and a herniated intervertebral disc.

On August 29, 2013 Dr. Nguyen stated that appellant was improving with conservative therapy. He reviewed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, which noted "a broad dis[c] bulge at L4-5 with a superimposed central protrusion, slightly small since 2006." The MRI scan report also noted a moderate central canal narrowing and mild bilateral neural foraminal narrowing. Dr. Nguyen stated, "Findings and diagnosis are consistent with history of injury, and in my opinion the condition is work related, based on the history provided by the patient."

On August 29, 2013 Dr. Nguyen recommended work restrictions of standing occasionally, walking occasionally, bending at the waist occasionally, and no torso twisting, climbing ladders, use of scaffolds, or lifting more than 10 pounds between August 29 and September 5, 2013. He released appellant from all restrictions in a report dated September 5, 2013. Appellant returned to work full duty with no restrictions on September 5, 2013.

By letter dated September 23, 2013, OWCP informed appellant of the evidence needed to support his claim and sent him a questionnaire for completion.

On October 4, 2013 appellant responded to OWCP's inquiries. He noted that he first consulted Dr. Borquez on July 25, 2013 with regard to his injury. Between the date of injury and the date appellant first received medical attention, he experienced extreme pain, such that he was unable to stand, sit, or walk without crutches. He applied heat and ice to the lower back area at home. Appellant stated that he had "no symptoms of the latest back injury before the injury on July 20, 2013 occurred."

By decision dated October 23, 2013, OWCP denied appellant's claim. It found that he had not submitted sufficient evidence to establish a causal relationship between his diagnosed conditions and the incident of July 20, 2013. OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the incident occurred; that a medical condition had been diagnosed; and that he was within the performance of duty.

On November 5, 2013 appellant requested a hearing before an OWCP hearing representative.

By letter dated November 1, 2013, Dr. Nguyen stated that appellant's back injury of July 20, 2013 was an exacerbation of a previously stable condition. He stated:

"[Appellant] has a history of lumbar dis[c] herniation but had been working full duty without restriction and without chronic pain medication. From time to time, his back may flare due to repetitive strain to his low back. [Appellant] did, however, not have any permanent disability. In this case, he reported acute onset of symptoms during the latter half of his 72 hours shift as a firefighter at the [employing establishment]. [Appellant's] work as a firefighter involves lifting, bending, pulling, squatting, climbing, and crawling all while wearing heavy personal protective equipment. This history along with his physical exam[ination] findings leads me to believe that [appellant] in fact suffered from an injury that arose during the course of performing his usual and customary duties as a firefighter. The 'action of attempting to lift up a drip pan' was merely a contributing factor that triggered muscle spasms of [appellant's] low back exacerbating his lumbar dis[c] herniation."

Appellant submitted several statements from coworkers in support of his claim.

A hearing before an OWCP hearing representative was held on May 12, 2014. At the hearing, appellant testified that after he bent over to pick up an oil pan, he felt a twinge in his back, and noted that he had felt this once before. He stated that he had a work-related herniated

disc injury in 2005 or 2007 and that he was off for seven months at the time of that back injury.² Appellant stated that his physicians explained to him that his herniated disc would never completely resolve, and that duties of his employment could aggravate his condition. He noted that he went to physical therapy for treatment of his condition before returning to full duty.

By decision dated July 29, 2014, the hearing representative affirmed the decision dated October 23, 2013, denying appellant's claim on the grounds that he had not submitted sufficient medical evidence to establish a causal relationship between his condition and the incident of July 20, 2013. She found that, while the letter of November 1, 2013 from Dr. Nguyen linked the symptom of muscle spasm and exacerbation of a preexisting lumbar disc herniation to the incident of July 20, 2013, he did not provide rationale for his opinion. The hearing representative noted that the August 29, 2013 report of Dr. Nguyen showed that the disc herniation condition was smaller than in 2006.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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.⁶ 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.⁷ 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.⁸

² The Board notes that appellant had two prior claims accepted by OWCP on January 6 and November 6, 2006 under claim numbers xxxxxx962 and xxxxxx727, respectively. The International Classification of Diseases, 9th Revision (ICD9), code for the diagnosis accepted under case number xxxxxx727 was for sprain and strain of the lumbosacral region.

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁵ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

The claimant 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 or to specific conditions of employment.⁹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.¹² 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.¹³

ANALYSIS

Appellant alleged that, on July 20, 2013, he injured his lower back when he attempted to pick up a drip oil pan and felt a twinge in his lower back. OWCP accepted that the July 20, 2013 incident occurred as alleged. It denied appellant's claim on October 23, 2013 and affirmed this denial on July 29, 2014, finding that there was insufficient medical evidence to establish an injury causally related to the employment incident.

OWCP denied the claim on the grounds that appellant had not submitted evidence containing a rationalized medical opinion on causal relationship. The medical evidence bearing on the issue of causal relationship consists primarily of reports from Dr. Nguyen. On August 7, 2013 Dr. Nguyen diagnosed appellant with lumbar radiculopathy and back pain. He stated that appellant's symptoms had been present since July 20, 2013, when he was finishing a 72-hour shift at the employing establishment, reached down to pick up a pan, and experienced acute, sharp, excruciating pain. Dr. Nguyen noted that appellant had a history of lumbar disc herniation followed by three epidural steroid injections. He stated, "Findings and diagnosis are consistent with history of injury, and in my opinion the condition is work related, based on the history provided by the patient." On August 29, 2013 Dr. Nguyen stated that appellant was improving with conservative therapy. He reviewed an MRI scan of appellant's lumbar spine, which noted "a broad dis[c] bulge at L4-5 with a superimposed central protrusion, slightly small since 2006."

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹³ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The MRI scan report also noted a moderate central canal narrowing and mild bilateral neural foraminal narrowing. Dr. Nguyen stated, “Findings and diagnosis are consistent with history of injury, and in my opinion the condition is work related, based on the history provided by [appellant].” By letter dated November 1, 2013, he stated that appellant’s back injury of July 20, 2013 was an exacerbation of a previously stable condition. Dr. Nguyen opined:

“[Appellant] has a history of lumbar dis[c] herniation but had been working full duty without restriction and without chronic pain medication. From time to time, his back may flare due to repetitive strain to his low back. [Appellant] did, however, not have any permanent disability. In this case, he reports acute onset of symptoms during the latter half of his 72 hours shift as a firefighter at the [employing establishment]. [Appellant’s] work as a firefighter involves lifting, bending, pulling, squatting, climbing, and crawling all while wearing heavy personal protective equipment. This history along with his physical exam[ination] findings leads me to believe that he in fact suffered from an injury that arose during the course of performing his usual and customary duties as a firefighter. The ‘action of attempting to lift up a drip pan’ was merely a contributing factor that triggered muscle spasms of [appellant’s] low back exacerbating his lumbar dis[c] herniation.”

The Board finds that appellant has established a firm diagnosis of lumbar disc herniation, but that the reports of Dr. Nguyen are insufficiently rationalized to establish causal relationship. Dr. Nguyen did not provide a full explanation of how the incident of July 20, 2013, in particular, aggravated appellant’s preexisting work-related condition.¹⁴ However, although his opinion may not be fully rationalized, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. Appellant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵

This case is similar to the case of *L.M.*¹⁶ In *L.M.*, appellant alleged aggravation of a preexisting knee condition after stepping off of a curb. A physician stated that she had stepped on a curb and as a result experienced a sharp pain in her knee, which he advised was a sprain of the knee from stepping on the curb and noted that the sprained knee already evidenced the presence of some chondromalacia. He indicated that this led to an acute exacerbation of a preexisting condition, notably the chondromalacia of the patella, and persistent pain. OWCP denied appellant’s claim, finding that she had not submitted sufficient medical evidence to establish a causal relationship. The Board set aside this decision and remanded the case for further development, stating that, while this opinion was not sufficient to meet her burden of

¹⁴ The Board notes that, contrary to the hearing representative’s observation that the August 29, 2013 report showed that appellant’s lumbar disc condition was “smaller than in 2006,” the report actually states that an MRI scan revealed “a broad dis[c] bulge at L4-5 with a superimposed central protrusion, slightly small since 2006.” Hence, on its face, the note states that appellant’s condition had been small since 2006, not that it had shrunk in size since that time.

¹⁵ See *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁶ Docket No. 13-1402 (issued February 7, 2014).

proof with regard to her claim for an aggravation of a preexisting knee condition, it raised a substantial inference between her claimed condition and the employment incident, and was sufficient to require OWCP to further develop the medical evidence. The Board noted that there was no opposing medical evidence of record.

In this case, the medical evidence clearly establishes that appellant was diagnosed with aggravation of lumbar disc herniation by Dr. Nguyen, and that he opined that the incident of July 20, 2013 aggravated this preexisting work-related condition. As in *L.M.*, Dr. Nguyen's opinion on causal relationship was not fully rationalized, but was supported by a statement on causation, findings on examination, and a statement of how the traumatic incident contributed to an aggravation of a preexisting condition. OWCP has a responsibility to further develop the case record: it contains affirmative statements of causation, supported by physical findings, and an explanation of how the traumatic incident of July 20, 2013 caused an aggravation. Therefore, while the medical reports of record do not provide a fully rationalized medical opinion explaining how the July 20, 2013 incident caused an aggravation of appellant's lumbar disc herniation, they are consistent in indicating that appellant sustained an employment-related injury and raise a substantial inference between appellant's claimed condition and the employment incident. The Board concludes that this evidence is sufficient to require further development of the case record.¹⁷

On remand, OWCP should refer appellant, the case record, and a statement of accepted facts to an appropriate specialist to determine whether he suffered an injury due to the July 20, 2013 employment incident and how it relates to his prior injuries accepted by OWCP as work related. After such further development of the case record as it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for decision, as further development of the medical evidence is warranted.

¹⁷ See *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see also *R.C.*, Docket No. 13-408 (issued January 10, 2014).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: February 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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