

FACTUAL HISTORY

This case has previously been before the Board.² On March 29, 2011 appellant, then a 35-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2009 she injured her lower back due to a slip and fall on snow-covered wooden stairs while in the performance of duty. In a decision dated March 6, 2014, the Board affirmed a December 26, 2012 OWCP decision finding that appellant did not meet her burden of proof to establish lower back conditions causally related to a December 21, 2009 employment incident. The Board found that the medical evidence of record was insufficient to establish causal relationship. The facts and circumstances of the case, as set forth in the prior decision, are incorporated herein by reference.

On August 28, 2014 appellant, through counsel, requested reconsideration and submitted an August 10, 2014 report from Dr. Edward Goldberg, a Board-certified orthopedic surgeon, who diagnosed left-sided nucleus pulposus at L5-S1. Dr. Goldberg reported that appellant was involved in a work-related accident on December 21, 2009 when she slipped and fell on a staircase landing directly on her back. On September 23, 2010 he performed a left L5-S1 hemilaminotomy and discectomy for herniated nucleus pulposus to the left at L5-S1. Appellant underwent postoperative rehabilitation, but developed progressive low back pain and some intermittent left leg radicular pain. Dr. Goldberg further reported that electromyography (EMG) and nerve conduction velocity (NCV) studies performed on June 20, 2011 revealed a left S1 radiculopathy. He opined that this was due to the original herniation compressing the left S1 nerve root. A postoperative magnetic resonance imaging (MRI) scan of the lumbar spine on June 20, 2011 revealed postoperative changes at the discectomy set on the left at L5-S1 as well as progressive disc degeneration at L5-S1 with a broad-based disc protrusion. On September 27, 2011 Dr. Goldberg performed a posterolateral instrumented fusion surgery at L5-S1 to address the degenerative disc, which occurred after the discectomy secondary to the herniation. He indicated that in approximately 10 percent of well-performed surgical discectomies, a disc can continue to degenerate resulting in degenerative changes, axial back pain, and the need for additional fusion surgery. As of June 25, 2012 appellant was released to work with restrictions at a sedentary to light-duty level, lifting 10 to 15 pounds, and changing positions from sitting to standing to walking every 30 minutes as needed. Dr. Goldberg opined that appellant's lumbar condition and two surgeries were causally related to the December 21, 2009 employment incident.

Appellant also provided a report dated May 9, 2014 from Dr. Mark Sokolowski, an orthopedic surgeon and associate of Dr. Goldberg. Dr. Sokolowski noted that a "slip and fall down stairs results in a flexion moment to the lumbar spine (increased intradiscal pressure anteriorly and stretch of the facet joint capsule posteriorly) followed by an extension moment to the lumbar spine (increased tension upon the disc anteriorly and increased loading of the facet joints posteriorly)." He reported that a "traumatic increase in intradiscal pressure is a known cause of traumatic disc herniation" and explained that disc herniations most commonly resulted in radicular symptoms, such as left leg pain, and facet injuries most commonly resulting in back pain. Dr. Sokolowski found that both conditions were present in appellant upon evaluation by Dr. Goldberg and were noted by Dr. Goldberg to have occurred after slipping and falling at

² Docket No. 13-0618 (issued March 6, 2014).

work. He concluded that appellant's December 21, 2009 employment incident caused her lumbar pain and lumbar radiculopathy based on the temporal correlation provided by appellant, the onset of symptoms, and consistent examination and test findings.

By decision dated May 21, 2015, OWCP denied modification of the prior decision finding the medical evidence submitted was insufficient to establish a causal relationship between appellant's lumbar conditions and the December 21, 2009 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury³ was sustained in the performance of duty, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

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 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.⁵

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.⁶

ANALYSIS

OWCP has accepted that the employment incident of December 21, 2009 occurred at the time, place, and in the manner alleged. On appeal, counsel contends that OWCP's decision was contrary to fact and law.

³ 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).

⁴ See *T.H.*, 59 ECAB 388 (2008).

⁵ *Id.*

⁶ *Id.*

The Board finds the case not in posture for decision on the issue of causal relationship.

In support of her August 28, 2014 reconsideration request, appellant submitted an August 10, 2014 report from Dr. Goldberg who diagnosed left-sided nucleus pulposus at L5-S1 and asserted that appellant was involved in a work-related accident on December 21, 2009 when she slipped and fell on a staircase landing directly on her back. On September 23, 2010 Dr. Goldberg performed at left L5-S1 hemilaminotomy and discectomy for herniated nucleus pulposus to the left an L5-S1. He noted that EMG and NCV studies performed on June 20, 2011 revealed a left S1 radiculopathy. Dr. Goldberg opined that this was due to the original herniation compressing the left S1 nerve root. On September 27, 2011 he performed a posterolateral instrumented fusion surgery at L5-S1 to address the degenerative disc, which occurred after the discectomy secondary to the herniation. Dr. Goldberg explained that in approximately 10 percent of well-performed surgical discectomies, a disc can continue to degenerate resulting in degenerative changes, axial back pain, and the need for additional fusion surgery. As of June 25, 2012 appellant was released to work with restrictions at a sedentary to light-duty level, lifting 10 to 15 pounds, and changing positions from sitting to standing to walking every 30 minutes as needed. Dr. Goldberg opined that her lumbar condition and two surgeries were causally related to the December 21, 2009 employment incident.

Appellant also provided a report dated May 9, 2014 from Dr. Goldberg's medical associate Dr. Sokolowski who explained that a "slip and fall down stairs results in a flexion moment to the lumbar spine (increased intradiscal pressure anteriorly and stretch of the facet joint capsule posteriorly) followed by an extension moment to the lumbar spine (increased tension upon the disc anteriorly and increased loading of the facet joints posteriorly)." Dr. Sokolowski asserted that a "traumatic increase in intradiscal pressure is a known cause of traumatic disc herniation" and explained that disc herniations most commonly resulted in radicular symptoms, such as left leg pain, and facet injuries most commonly resulting in back pain. He found that both conditions were present in appellant upon evaluation by Dr. Goldberg and were noted by Dr. Goldberg to have occurred after slipping and falling at work. Dr. Sokolowski concluded that appellant's December 21, 2009 employment incident caused her lumbar pain and lumbar radiculopathy based on the temporal correlation provided by appellant, the onset of symptoms, and consistent examination and test findings.

The Board finds that, while the reports from Drs. Goldberg and Sokolowski are not completely rationalized, they are consistent in finding that appellant slipped and fell down a staircase in the performance of duty on December 21, 2009 and the evidence now explains the process by which such a fall can cause a spinal injury. These reports are not contradicted by any substantial medical or factual evidence of record.⁷ While the reports are insufficient to meet appellant's burden of proof to establish a claim, they raise an inference of causal relationship between the claimed condition and the December 21, 2009 incident, sufficient to require further medical development by OWCP.⁸

⁷ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁸ *Id.*; see also *John J. Carlone*, 41 ECAB 354 (1989).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.⁹

On remand, OWCP should refer appellant, together with the case record and a statement of accepted facts, to an appropriate specialist for an examination to determine whether the December 21, 2009 employment incident caused or aggravated new and/or preexisting lower back conditions and whether it contributed to the need for surgery.¹⁰ After such further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision on the issue of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: April 15, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Phillip L. Barnes*, 55 ECAB 426 (2004); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002).

¹⁰ See *G.B.*, Docket No. 09-1768 (issued May 17, 2010).