

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury to his lower back causally related to a July 18, 2013 employment incident.

FACTUAL HISTORY

On September 12, 2013 appellant, then a 54-year-old general engineer, filed a traumatic injury claim (Form CA-1) alleging that he felt back pain on July 18, 2013 while he was crawling under floor plates to measure plate supports and identify interferences for a piece of equipment. The employing establishment confirmed its knowledge of the facts about the injury agreed with the statements of appellant. However, it controverted the claim due to lack of medical evidence and “lack of report of injury.”

In an August 14, 2013 report, Dr. Gregory A. Richter, Board-certified in family medicine, noted that appellant had back and leg pain and right shoulder pain. He advised that appellant presented with complaints of low back and right lower extremity radicular symptoms for the last three weeks with no obvious trauma. Dr. Richter related that the pain was present for the last two months. He examined appellant and diagnosed sciatica, lumbago, and lateral epicondylitis. On August 21, 2013 Dr. Richter advised appellant that back x-rays revealed arthritic changes.

A September 9, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine, read by Dr. Michael L. Hill, a Board-certified diagnostic radiologist, revealed degenerative disc disease with mild generalized disc bulging and a small right lateral disc protrusion at the L3-4 level; mild degenerative disc disease with mild generalized disc bulging and mild spinal canal stenosis at L1-2 level; and mild degenerative disc disease without evidence of disc protrusion, spinal cord stenosis, or traumatic injury.

In a September 18, 2013 report, Dr. Pierce D. Nunley, a Board-certified orthopedic surgeon, noted that appellant had back, buttock, and leg pain since July 18, 2013. He noted that appellant was at work measuring a place to fit in a piece of equipment and was working in a closed space where he could not stand up. Dr. Nunley indicated that appellant related that he had to work in awkward positions and walk around in a “duck walk.” He explained that during one of these movements, appellant felt an immediate onset of right-sided back pain of an electrical-type, going down his right lower extremity. Dr. Nunley advised that the pain diminished, but appellant continued to have a little mild aggravation and over the next three weeks, his right hip, leg, and knee actually worsened significantly. He related that appellant denied having any of these symptoms prior to July 18, 2013. Dr. Nunley examined the low back and he found that appellant stood flexed at the waist with a list to the left. He noted limitations in lumbar extension, which were moderate as he only got a few degrees past neutral and had mildly limited rotation to the right. Dr. Nunley determined that appellant did not have any sacral tenderness, but a mild component of “PGD [pain generating disc].” He diagnosed low back pain, mild lumbar disc derangement, and stenosis with radiculopathy. Dr. Nunley provided an addendum advising that appellant had principally a right lower extremity radiculopathy in an L4 pattern. He indicated that appellant had an annual tear at L3-4 with subarticular stenosis at that level that would affect the L4 nerve root. Dr. Nunley recommended further testing and physical therapy.

In a September 23, 2013 report, Dr. Sharon H. Evers, Board-certified in occupational medicine and an employing establishment physician, controverted the claim. She advised that appellant did not file the claim until two months after the incident and only after having positive MRI scan findings. Dr. Evers also noted that appellant had a prior history of lower back pain and that the MRI scan revealed degenerative changes.

In letters dated September 16 and 25, 2013, Ann Harmon, an injury compensation program administrator, challenged the claim as there was no official record of injury with the safety office, nor was appellant seen by the employing establishment physician on the claimed date of injury. She indicated that the September 9, 2013 MRI scan showed significant degenerative disc disease and arthritic findings. Ms. Harmon noted that appellant had a back complaint almost a year prior. She noted that appellant did not inform the employing establishment of the injury until August 14, 2013.

The employing establishment provided an October 16, 2012 report from Dr. Richter who noted that appellant was seen with complaints of low back pain and tightness. Appellant indicated that symptoms began 24 hours earlier when reaching for his briefcase in his car. Dr. Richter advised that there were no radicular symptoms and no history of previous injury. He diagnosed a lumbar sprain or strain. In an August 14, 2013 report, Dr. Richter noted that appellant presented with complaints of low back/leg pain and right leg radicular symptoms. He advised that there was no obvious trauma. Dr. Richter diagnosed right back/leg pain and right shoulder/arm pain.

In an October 16, 2013 report, Dr. Nunley noted that appellant had physical therapy and had some significant pain in his right knee, right anterior thigh, and hip. In an October 22, 2013 report, he diagnosed low back pain. OWCP also received physical therapy notes.

In a January 7, 2014 letter, OWCP advised appellant that additional factual and medical evidence was needed to support his traumatic injury claim. It asked that he further explain how the injury occurred and why he delayed informing the employing establishment. OWCP also requested a physician's reasoned opinion explaining how the reported work incident caused or contributed to appellant's condition.

In an April 18, 2014 telephone memorandum, appellant indicated to OWCP that he had a prior work-related back claim for which he was treated, but that it resolved. He further indicated that he was not pursuing a claim for that injury.

OWCP received supportive statements concerning the incident in this claim from appellant's supervisor and coworker. In a January 23, 2014 statement, Keith Kelley, an equipment specialist and witness to the July 18, 2013 incident, confirmed that he and appellant were working in a pit taking measurements. He advised that they had to get on their hands and knees to take the measurements and climb in and out of the pit, which "made for very awkward movements." In a January 27, 2014 statement, Michael A. Starks, appellant's supervisor, stated that he had no reason to doubt appellant's integrity in the matter. He confirmed that appellant advised him that he twisted his back and his symptoms progressively worsened.

In a January 30, 2014 statement, appellant explained that when his injury occurred he thought he had pulled a muscle and reported the incident to his superior verbally. He indicated that he planned on personally covering his expenses as he believed it was merely a muscle strain. Appellant decided to file a claim when he learned he had a disc protrusion and needed injections and surgery. He explained that he had a muscle strain in his back in October 2012, while reaching across his car to lift his briefcase when reporting for work. Appellant explained that the prior incident was a workplace injury, he informed his boss, he indicated that it was not a big deal, and that he was treated with muscle relaxers for a few days until the injury was better. He denied that he had ever been diagnosed with or treated for a disc bulge or protrusion.

By decision dated March 27, 2014, OWCP denied appellant's claim as he did not establish an injury "that arose during the course of employment and within the scope of compensable work factors as defined by FECA."

By letter dated January 30, 2015, counsel for appellant requested reconsideration. In support of the request, appellant submitted a January 8, 2015 report from Dr. Nunley who noted that he initially saw appellant in September 2013 for back, hip, and leg pain which appellant reported began after a July 18, 2013 injury. Dr. Nunley advised that appellant reported an onset of pain which occurred while attempting to measure a piece of equipment while in closed space in an awkward position. He related that appellant indicated that, while he was in one of those positions, he felt an immediate onset of right-sided back pain, with symptoms throughout his right leg. Dr. Nunley noted that on the initial evaluation appellant indicated that he did not have these pains before July 18, 2013. Appellant's complaints included pain across the back extending into the right groin, medial thigh, and anterior portion of his knee and shin. He had limited lumbar range of motion. Dr. Nunley found positive straight leg raise reproducing his thigh and groin symptoms. He also found some mild weakness in the lower extremities and diminished right patellar reflexes compared to the left. Dr. Nunley noted that diagnostic testing had been performed. He also noted that appellant had complaints of low back pain and tightness in 2012 when he saw Dr. Richter. Dr. Nunley opined that "[e]ven in light of this I do feel that the July 18, 2013 [employment incident] more likely than not caused the back, buttock and leg pain as he described, and are the basis for his subsequent medical treatment. There may be other causes, but the onset of pain on the above date is again, more likely than not the reason for his evaluation and subsequent treatment."

By decision dated December 15, 2015, OWCP affirmed as modified the March 27, 2014 decision "from a denial based on fact of injury -- medical to a denial on causal relationship."

In a December 16, 2015 decision, OWCP reissued the December 15, 2015 decision to reflect that the decision was modified from a denial based on performance of duty to a denial based on causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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,³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon 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 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.⁶ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁷ 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

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.⁹

ANALYSIS

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

In this case, appellant alleged that he injured his back on July 18, 2013 while he was crawling under floor plates to make measurements and identify interferences for a piece of equipment. OWCP found and the evidence supports that the claimed event occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established that the claimed incident -- that appellant was crawling in a tight space -- occurred at work as alleged.

The Board finds that while the medical evidence is insufficiently rationalized to establish that appellant sustained a work-related condition, the medical reports from Dr. Nunley are supportive of causal relationship and are sufficient to require further development of the case record by OWCP.¹⁰ With the exception of the September 23, 2015 report from Dr. Evers, an employing establishment physician who controverted the claim based upon late notice and a

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

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

¹⁰ See *supra* note 6; *Horace Langhorne*, 29 ECAB 820 (1978).

prior history of a back condition but not on the basis, there is no contradictory medical evidence. Dr. Evers did not base her opinion on any medical findings.

In a September 18, 2013 report, Dr. Nunley noted appellant's symptoms since July 18, 2013 and he described the July 18, 2013 work incident where appellant had to work in an awkward position. He explained that during one of these movements, appellant felt an immediate onset of right-sided back pain of an electrical type, going down his right lower extremity. Dr. Nunley related that appellant denied having these symptoms before July 18, 2013. He noted findings and diagnosed low back pain, mild lumbar disc derangement, and stenosis with radiculopathy. On January 8, 2015 Dr. Nunley noted that appellant explained that on July 18, 2013, while he was in the closed space, he felt an immediate onset of right-sided back pain with symptoms going through his right lower extremity. He also noted that appellant had complaints of low back pain and tightness in 2012 when he saw Dr. Richter. However, Dr. Nunley concluded that "[e]ven in light of this I do feel that the July 18, 2013 more likely than not cause the back, buttock and leg pain as he described, and are the basis for his subsequent medical treatment. There may be other causes, but the onset of pain on the above date is again, more likely than not reason for his evaluation and subsequent treatment." The Board finds that Dr. Nunley's reports generally supported that he believed appellant's conditions were caused or aggravated by the employment activity. While these reports are not completely rationalized, Dr. Nunley was consistent in indicating that appellant sustained an employment-related back condition.

Proceedings under FECA are not adversarial in nature nor is 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.¹¹

On remand, OWCP should refer appellant, the case record, and a statement of accepted facts to an appropriate Board-certified specialist for an evaluation and a rationalized medical opinion regarding whether the July 18, 2013 work incident caused or contributed to appellant's diagnosed conditions. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

¹¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: July 25, 2016
Washington, DC

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

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

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