United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 16-0655**
	)	**Issued: May 26, 2016**
DEPARTMENT OF LABOR, DIVISION OF FEDERAL EMPLOYEES' COMPENSATION, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2016 appellant filed a timely appeal from a September 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has met her burden of proof to establish an injury causally related to an October 30, 2014 employment incident.

FACTUAL HISTORY

On November 3, 2014 appellant, then a 52-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging a low back injury in the performance of duty. She alleged

[1] 5 U.S.C. § 8101 *et seq.*

that on October 30, 2014 she injured her back as a result of using stairs to evacuate the building due to a bomb threat. Appellant stopped work on November 5, 2014 and worked intermittently before returning to full duty on December 29, 2014.

In a November 19, 2014 disability status report, Dr. Samuel Chmell, a Board-certified orthopedic surgeon, advised that appellant was unable to work from November 19 through December 18, 2014. He assessed lumbar disc herniation.

By letter dated December 9, 2014, OWCP notified appellant that initially her claim was administratively handled to allow medical payments, as it appeared to be a minor injury resulting in minimal or no lost time from work. However, it advised that it was now considering the merits of her claim because she had not returned to work in a full-time capacity. OWCP advised appellant of the type of evidence needed to establish her claim.

Subsequently, OWCP received a November 6, 2014 report by Dr. Chmell, who advised that appellant sustained an injury to her low back on October 30, 2014 while at work. Dr. Chmell noted that the building where she worked had a bomb scare which required her to run down eight flights of stairs as she could not take the elevator. He indicated that she felt a sharp pain down her low back radiating down the back of her right thigh. Dr. Chmell advised that she related that her back pain was higher than the pain she felt with a previous back injury.[2] On examination he noted that appellant walked with a limp on the right, had difficulty getting in and out of her chair. Dr. Chmell noted lumbar spasm and tenderness, zero degrees of extension of the lumbar spine, 35 degrees flexion of the lumbar spine, positive straight leg raising on the right and negative on the left, and diminished strength and sensation at the right ankle and foot. He assessed acute low back injury and noted that appellant was fully incapacitated as she had marked difficulty moving around and was at risk for falling.

In a November 10, 2014 diagnostic report, Dr. Michael Micaletti, a Board-certified diagnostic radiologist, advised that the magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc disease, facet arthropathy, a broad-based disc protrusion laterally on the right with foraminal extension at L4-5 similar to that seen in a previous examination, and a broad-based disc protrusion at L5-S1 slightly larger than previously seen. An August 13, 2012 MRI scan was used for comparison.

In a November 13, 2014 report, Dr. Chmell advised that appellant experienced right-sided low back pain radiating down her right leg. He noted that the most recent MRI scan of the low back revealed an old disc herniation with residuals at L4-5 and a new herniation at L5-S1. Examination revealed a limp on the right side, lumbar spasm, and tenderness, positive straight leg raising on the right, and diminished strength and sensation at the right ankle and foot. Dr. Chmell assessed L5-S1 disc herniation and L4-5 degeneration and stenosis due to an old injury. He prescribed physical therapy and advised that she could return to work with restrictions. On November 20, 2014 Dr. Chmell advised that appellant returned to work but was

[2] The record reveals that appellant filed an occupational disease claim (Form CA-2) on January 2, 2010 for a herniated disc at L4-5 and degenerative disc disease involving her work chair. Appellant underwent surgery. OWCP denied this claim under File No. xxxxxx522.

unable to move about in a safe reasonable fashion. He noted that she was unable to work until her next appointment on December 18, 2014.

In a December 8, 2014 attending physician's report (Form CA-20), Dr. Chmell assessed lumbar disc herniation. He checked a box marked "yes" to indicate that the condition was caused or aggravated by an employment activity. Dr. Chmell noted that the condition was a low back injury at work on October 30, 2014. He also indicated that appellant had a preexisting low back condition which required surgery in 1991.

In a December 16, 2014 statement, the employing establishment confirmed that the building was forced to evacuate the premises on October 30, 2014. It noted that appellant exited using the stairs. After the evacuation employees went to a designated rally point five blocks away from the building and were subsequently dismissed for the day. The employing establishment indicated that the process took place during regular work hours and that it considered the evacuation as part of its employees' official duties.

In a December 31, 2014 statement, appellant advised that she did not receive a development letter.

In a January 8, 2015 report, Dr. Chmell advised that appellant had to run down eight flights of stairs due to a bomb scare. Lumbar spine examination revealed a limp on the right side, spasm, spine tenderness, and diminished range of motion. There was positive straight leg raising, and diminished strength and sensation at the right ankle and foot. He assessed L5-S1 disc herniation and L4-5 disc reherniation and degeneration. Dr. Chmell opined that running down eight flights of stairs of a building being evacuated for a bomb scare was a competent cause of injury to the low back, particularly in somebody with a weakened back from a previous injury. He attributed the L5-S1 disc herniation to running down eight flights of stairs.

By decision dated March 12, 2015, OWCP denied appellant's claim because the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to the accepted work events.

In a March 21, 2015 report, Dr. Chmell, advised that running down stairs was very stressful to the lumbar spine. He noted that the gravitational forces acting on the lumbar spine are 10 times greater when running down the stairs than when ascending stairs. Dr. Chmell further noted that the act of running down stairs provided repetitive traumatic flexion-extension mechanism to the lumbar spine with these markedly added gravitational forces. He indicated that repetitive stressful flexion-extension trauma to the lumbar spine can and does result in disc herniation. Dr. Chmell advised that there was nothing in the medical record to explain the sudden and dramatic change in August 13, 2012 and November 2014 MRI scans.

In an April 3, 2015 statement, appellant clarified that she did not actually run down the stairs and that she traveled down the stairs as fast as possible. She noted that she had no real injuries since her back surgery in 2012 and contended that the diagnostic reports showed that her injury was caused by the alleged October 30, 2014 injury.

On April 4, 2015 appellant requested an oral hearing before an OWCP hearing representative.

In a July 30, 2015 report, Dr. Chmell clarified the meaning of the phrase "running down the stairs" in his previous reports. He explained that "running down the stairs" is a common phrase and that he actually meant hurrying down the stairs to the best of appellant's ability. Dr. Chmell acknowledged that appellant had a preexisting injury at the L4-5 level of her lumbar spine, but noted that the new injury was at the L5-S1 level. He reiterated that the diagnosed condition was attributed to the work injury.

An oral hearing took place on August 4, 2015. Appellant advised that she did not walk down stairs on a regular basis and that she typically took escalators and elevators. She clarified that she did not literally run down the stairs, but she moved as quickly as she could which she described as slower than the average person. Appellant acknowledged that she had a preexisting back injury at L4-5, but noted that her most recent MRI scan showed a problem at L5-S1 that she did not have prior to the incident.

In a January 15, 2015 statement, Ruth Riley, appellant's coworker, advised that on October 30, 2014 the elevators were not working so she had to walk down the stairwell with appellant. She noted there were a few coworkers who were exiting at the same time but appellant could not keep up with their pace. Ms. Riley indicated that she stayed with appellant as she noticed that she was unable to walk as fast. In a September 1, 2015 statement, Brent Barron, a coworker, advised that he was trained in evacuations as the floor warden for the eighth floor. He indicated that on the day in question he was not at work and to his knowledge there was no one at the office who was trained in evacuations from the eighth floor. Mr. Barron opined that evacuation procedures were not followed and if they had been the injury to appellant could have been prevented.

By decision dated September 17, 2015, the OWCP hearing representative affirmed the prior decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

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.[7]

ANALYSIS

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

Appellant filed a traumatic injury claim asserting that she sustained a low back injury as a result of walking down stairs to evacuate her work building. OWCP denied the claim as appellant submitted insufficient evidence to establish that the October 30, 2014 work incident caused an L5-S1 disc herniation and resulted in L4-5 disc reherniation and degeneration. The Board finds, however, that the case requires further development regarding whether she sustained a traumatic injury causally related to the October 30, 2014 employment incident.

In his March 21, 2015 report, Dr. Chmell, advised that running down stairs was very stressful to the lumbar spine. He noted that the gravitational forces acting on the lumbar spine are 10 times greater when running down the stairs than when ascending stairs. Dr. Chmell further noted that the act of running down stairs causes repetitive traumatic flexion-extension mechanism to the lumbar spine with these markedly added gravitational forces. He indicated that repetitive stressful flexion-extension trauma to the lumbar spine can and does result in disc herniation. Dr. Chmell further advised that there was nothing in the medical record to explain the sudden and dramatic change in the August 13, 2012 and November 2014 MRI scans. In his July 30, 2015 report, he clarified the use of the phrase "running down the stairs" in his previous reports. Dr. Chmell explained that running down the stairs" is a common phrase and that he actually meant hurrying down the stairs to the best of appellant's ability. He noted that appellant's preexisting injury was at the L4-5 level of her lumbar spine, while the new injury was at the L5-S1 level. Dr. Chmell reiterated that the diagnosed condition was attributed to the work injury.

Dr. Chmell's reports, when read together, identified the history of the injury, identified findings upon examination, and explained how the accepted work incident caused or aggravated a diagnosed condition. The Board finds that Dr. Chmell's report are sufficient, given the absence of any opposing medical evidence, to require further development of the record.[8] It is well established that proceedings under FECA are not adversarial in nature[9] and while appellant has

[6] *T.H.*, 59 ECAB 388 (2008).

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

[8] *See Earnest J. Reece, Jr.*, 32 ECAB 1508, 1510 (1981).

[9] *See e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*. 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[10] OWCP has an obligation to see that justice is done.[11]

The case will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.[12]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2015 decision of Office of Workers' Compensation Programs is set aside and the case remanded for additional development consistent with this decision.

Issued: May 26, 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

[10] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[11] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[12] *See John J. Carlone*, 41 ECAB 354 (1989).