

**United States Department of Labor
Employees' Compensation Appeals Board**

A.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Monroe, NY, Employer**

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**Docket No. 16-1370
Issued: April 14, 2017**

Appearances:
*Paul Kalker, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2016 appellant, through counsel, filed a timely appeal from a May 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 sustained an injury causally related to an April 3, 2015 employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 29, 2015 appellant, then a 44-year-old rural letter carrier, filed a recurrence of disability claim (Form CA-2a) alleging that on April 3, 2015 she experienced pain radiating from her buttocks to her left leg lifting parcels out of a hamper. She related that the pain from her original employment-related back sprain on December 10, 2013 increased on April 3, 2015.³ Appellant did not stop work and the employing establishment advised that she did not indicate that she had “any health issues as a result of an injury.”

OWCP developed the claim as a new injury.

A magnetic resonance imaging (MRI) scan dated April 15, 2015 revealed “[a] large central to left paracentral disc herniation with extrusion [that] contacts, flattens, deforms and displaces the thecal sac posteriorly.” It revealed significant progression of a disc herniation at L5-S1 compared to a prior study.

In a report dated April 23, 2015, Dr. Kenneth Rauschenback, an osteopath, discussed appellant’s December 2013 work injury and noted that a lumbar spine MRI scan obtained in December 2013 revealed disc bulges at L4-5 and L5-S1, but no fracture or herniation. He obtained a history of increased pain radiating down her left leg over the past few weeks without a new injury. Dr. Rauschenback noted that appellant could not work due to pain. He listed examination findings and reviewed the results of a lumbar MRI scan dated April 14, 2015 showing a disc herniation with a left paracentral L5-S1 disc extrusion that seemed a progression of the prior disc bulge. Dr. Rauschenback diagnosed low back pain, a lumbar herniated disc, and lumbar radiculopathy.

On April 24, 2015 Dr. Enrique Sanz, a Board-certified physiatrist, noted that appellant sustained an injury on December 10, 2013 when she slipped on ice going down stairs. Appellant returned to work, but experienced increased symptoms two weeks before his examination. Dr. Sanz diagnosed lumbar radiculitis/neuritis and a herniated lumbar disc at L5-S1. He related, “[Appellant’s] work injury was on December 10, 2013 [when] she slipped on ice [and] fell backwards. She was working until April 3, 2015 when she suffered an exacerbation also while working.” Dr. Sanz found that appellant was totally disabled and that her symptoms and complaints resulted from her employment injury.

Dr. Sanz, in a progress report dated June 2, 2015, reiterated that appellant had sustained a work injury on December 10, 2013 falling backward on ice and that she had an exacerbation of that injury on April 3, 2015 at work. He found that she could return to modified employment on June 8, 2015. Dr. Sanz related, “I feel the current symptoms are causally related to the injury at work. [Appellant’s] complaints are consistent with the illness/injury. [Her] history of the injury/illness is consistent with my objective findings.”

In a duty status report (Form CA-17) dated June 2, 2015, Dr. Sanz diagnosed a herniated disc at L5-S1 and checked a box marked “yes” that the history of a workers’ compensation injury

³ OWCP File No. xxxxxx806.

in December 2013 corresponded to that on the form of appellant falling on ice and injuring her lower back on December 10, 2013.

On June 17, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) from May 18 to June 12, 2015.

In an attending physician's form report (Form CA-20) dated June 10, 2015, Dr. Sanz diagnosed lumbar radiculitis, neuritis of the left lower extremity, and a herniated disc. He checked a box marked "yes" that the condition was caused or aggravated by employment and provided a history of her December 2013 fall down stairs on ice onto her back. Dr. Sanz opined that appellant was disabled from April 17 to June 2, 2015.

OWCP, on July 8, 2015, advised appellant that it had initially approved payment of a limited amount of medical expenses as her injury appeared minor and was not controverted by the employing establishment. It was now formally adjudicating her claim. OWCP noted that the medical evidence addressed her December 10, 2013 employment injury and did not attribute the diagnosed conditions to the alleged April 3, 2015 work injury. It requested that appellant submit a report from her physician explaining how the identified work incident caused or aggravated a diagnosed condition. OWCP also asked her to provide additional factual information in support of her claim.

In a statement dated August 4, 2015, appellant related that she told the postmaster on April 13, 2015 that she was experiencing severe low back pain. She believed that she aggravated her December 10, 2013 work injury.

By decision dated August 11, 2015, OWCP denied appellant's claim for an injury on April 3, 2015. It found that she had not submitted factual evidence supporting that the claimed work incident occurred as alleged.

In a report dated December 7, 2015, Dr. Nicholas Renaldo, an orthopedic surgeon, related that he initially evaluated appellant on June 6, 2014 for low back pain after a fall at work on December 10, 2013 and that imaging studies showed a disc bulge at L4-5 and L5-S1. He noted that on April 23, 2015 she saw a physician assistant for back pain that had increased over the past few weeks. Dr. Renaldo reported that imaging studies now showed a disc herniation at L5-S1 that "appeared to be progression of the disc bulge seen on the prior MRI [study]." He diagnosed a herniated disc at L5-S1 on the left with radiculopathy and recommended surgery. Dr. Renaldo concluded, "To reiterate, [appellant's] condition is a result of her work-related injury on December 10, 2013. The subsequent injury on April 3, 2015 caused an exacerbation of the injury sustained in the prior accident. As a result of the pain and neurologic deficit caused by these injuries, [she] is unable to work and remains temporarily totally disabled at this time."

On March 18, 2016 appellant, through counsel, requested reconsideration. He disagreed with OWCP's evaluation of her notice of recurrence of disability as a new claim. Counsel advised that the April 3, 2015 incident aggravated her prior December 10, 2013 employment injury, accepted under file number xxxxxx806 for lumbar sprain. He argued that OWCP should have expanded acceptance of that claim to include bulging and herniated discs. Counsel asserted that appellant provided a statement dated August 4, 2015 responding to OWCP's request for

factual information. He maintained that OWCP should have further developed the medical evidence in accordance with its procedures.

By decision dated May 26, 2016, OWCP modified its August 11, 2015 decision to find that appellant established the occurrence of the April 3, 2015 work incident. It determined, however, that the medical evidence was insufficient to show the identified incident of lifting parcels on April 3, 2015 caused or aggravated a diagnosed condition.

On appeal counsel contends that she has submitted sufficient medical evidence to establish a medical condition due to the April 3, 2015 work incident. He further argues that OWCP erred in not accepting additional conditions as due to the prior work injury. Counsel maintains that OWCP acted in an adversarial manner and should have participated in development of the evidence.

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 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 an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident.⁸

OWCP’s procedures provide:

“Doubling is the combination of two or more case files. It occurs when an employee has sustained more than one injury and it is necessary to combine all of

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *Id.*

the records in one case folder. The case records are kept separately but travel under one claim number, which is known as the master file.”⁹

Regarding when to double cases, the OWCP procedures state:

“Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files. Cases meeting one of the following tests must be doubled:

(1) A new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc.”¹⁰

OWCP procedures further provide that cases should be doubled as soon as the need to do so becomes apparent.¹¹

ANALYSIS

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

Appellant sustained an initial injury on December 10, 2013, accepted by OWCP for lumbar sprain under file number xxxxxx806. She returned to work in February 2014. On April 29, 2015 appellant filed a recurrence of disability claim beginning April 3, 2015 alleging that she experienced a sharp pain lifting parcels. The Board finds that OWCP properly adjudicated the claim as a new injury as she attributed her condition to new work factors.¹²

On April 23, 2015 Dr. Rauschenback reviewed appellant’s history of a December 2013 employment injury. He indicated that she felt increased pain radiating into her left leg for the last few weeks without a new injury. Dr. Rauschenback noted that an April 14, 2015 MRI scan showed a disc herniation and disc extrusion at L5-S1 that appeared a progression from the prior MRI scan obtained after the December 2013 injury.

In a report dated April 24, 2015, Dr. Sanz discussed appellant’s December 10, 2013 work injury and believed that she had experienced an exacerbation of that injury on April 3, 2015. He diagnosed lumbosacral radiculitis/neuritis and a herniated disc at L5-S1, and found that she was totally disabled. On June 2, 2015 Dr. Sanz discussed both appellant’s December 10, 2013 work injury and the April 3, 2015 employment incident and opined that her symptoms were due to her

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(a) (February 2000).

¹⁰ *Id.* at Chapter 2.400.8(c)(1).

¹¹ *Id.* at Chapter 2.400.8.

¹² *See id.* at *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

employment injury, noting that her complaints and history of injury were consistent with the examination findings.¹³

Dr. Renaldo, on December 7, 2015, advised that he treated appellant after her December 10, 2013 employment injury and that the diagnostic studies at that time showed a lumbar sprain. He indicated that the most recent MRI scan revealed an L5-S1 disc herniation and that appellant had another work injury on April 3, 2015. Dr. Renaldo diagnosed a herniated disc at L5-S1 due to appellant's December 10, 2013 work injury and opined that she also experienced an aggravation of her injury on April 3, 2015.

OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. If a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁴

Cases should be combined when correct adjudication of the issues depends on frequent cross reference between the files. In this case, the medical evidence addresses both the December 10, 2013 work injury and the April 3, 2015 employment incident. As discussed, OWCP procedures provide for the doubling of a claim when a new injury case is reported for an employee who previously filed an injury claim for a similar condition for the same part of the body.¹⁵ For a full and fair adjudication of appellant's claims the files should be doubled. The Board will remand the case to OWCP for doubling of file numbers with the current claim and further development of the medical evidence to determine whether appellant sustained either an April 3, 2015 work injury or progression of a previously accepted work injury. OWCP shall issue a *de novo* decision following any necessary further development.

CONCLUSION

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

¹³ In a June 10, 2015 form report, Dr. Sanz diagnosed lumbar radiculitis, left lower extremity neuritis, and a herniated disc. He checked the box marked "yes" that the condition was work related and included a history of the December 2013 work injury.

¹⁴ *Supra* note 10, at Chapter 2.400.8(c); *B.I.*, Docket No. 14-0578 (issued July 1, 2014).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 14, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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