

FACTUAL HISTORY

On September 24, 2014 appellant, then a 53-year-old city carrier, filed a claim for a recurrence of disability (Form CA-2a) alleging that while casing her route on September 22, 2014 she bent forward to lift a bucket of magazines, provoking a sharp pain in her lumbar spine radiating into both lower extremities. She noted a history of a prior occupational lumbar injury on August 25, 2007 under File No. xxxxxx937, with a recurrence on May 27, 2008 under File No. xxxxxx850, for which she was on restrictions at the time of the September 22, 2014 injury. On the reverse side of the claim form, the employing establishment contended that as appellant appeared to have claimed a new injury, OWCP should develop the claim as one for traumatic injury and not a recurrence of disability. It developed her claim for recurrence of disability as one for traumatic injury. Appellant stopped work at the time of the injury. Following a period of intermittent absences, she returned to work in a full-time modified position as a sales associate. Appellant claimed compensation for intermittent absences from November 19, 2014 to January 20, 2015 for medical appointments and when no light-duty work was available within her restrictions.³

Appellant provided medical reports from Dr. Christina Yu Ting Wang, an attending physician Board-certified in occupational medicine, who diagnosed a lumbar strain on September 22, 2014. Dr. Wang held appellant off work through September 23, 2014 due to lumbar pain. She noted work restrictions from September 24 to October 9, 2014.⁴ Dr. Wang renewed work restrictions in periodic reports through January 20, 2015, proscribing repetitive bending and limiting lifting to 25 pounds.

Dr. John Lane Hall, an attending internist, diagnosed a lumbar strain with lumbar radiculopathy on October 21, 2014. He restricted appellant from bending, twisting, and stooping, and limited lifting to five pounds. Dr. Hall continued work limitations through December 16, 2014.

In a November 25, 2014 letter, OWCP notified appellant of the additional evidence needed to establish her claim, including her attending physician's explanation of how and why the September 22, 2014 bending and lifting incident would cause a back injury. It afforded her 30 days to submit such evidence.

In response, appellant provided September 22, 2014 emergency room records signed by Dr. Monique D. Schaulis, Board-certified in emergency medicine. Dr. Schaulis diagnosed a back sprain or strain sustained that day "at work when reaching."

By decision dated February 2, 2015, OWCP accepted that the September 22, 2014 lifting incident occurred at the time, place, and in the manner alleged, but denied the claim because the

³ On November 7, 2014 appellant claimed wage-loss compensation (Form CA-7) for the period November 7 to 10, 2014, as there was no work available within her restrictions. The employing establishment confirmed the unavailability of modified work for the claimed period.

⁴ In an October 14, 2014 letter, the employing establishment noted that as it was unable to accommodate appellant's medical restrictions under File No. xxxxxx937, date of injury August 25, 2007, there "was no work available full day, which entitle[d] [appellant] to Continuation of Pay for 45 days."

medical evidence of record failed to establish causal relationship. It found that appellant's physicians did not explain why the accepted incident would cause a back injury.

On February 13, 2015 appellant requested reconsideration. She submitted additional evidence.

Dr. Wang provided periodic treatment notes dated from October 7, 2014 through March 23, 2015, diagnosing a continued lumbar strain with right-sided lumbar radiculopathy. Appellant participated in physical therapy from November 19, 2014 through May 18, 2015. Dr. Wang obtained a December 13, 2014 lumbar magnetic resonance imaging (MRI) scan demonstrating mild multilevel spondylitic changes without nerve root compression or significant stenosis. She prescribed medication and ordered permanent work restrictions against active bending and lifting more than 25 pounds.

Appellant filed claims for compensation (Form CA-7) for work absences related to medical and physical therapy appointments. On March 19, 2015 she claimed a schedule award (Form CA-7).

By decision dated June 5, 2015, OWCP denied modification of its February 2, 2015 decision.

OWCP included in the case record a May 8, 2015 second opinion report from File No. xxxxxx937 by Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, regarding the August 25, 2007 lumbar injury.⁵ Dr. Swartz noted accepted conditions of "a strain of neck, thoracic, and lumbar spines, with displacement of the lumbar intervertebral disc and without myelopathy [and] lumbar spine right sided." He opined that the accepted injuries had ceased without residuals, and that appellant had reached maximum medical improvement. Dr. Swartz found that she had no permanent impairment of any scheduled member as she had no objective sign of any of the accepted injuries. He added that appellant did not require any work or activity restrictions.

In a June 15, 2015 letter, appellant requested reconsideration. She submitted a January 20, 2015 narrative report from Dr. Wang, finding that appellant had reached maximum medical improvement. Dr. Wang opined that appellant would require permanent restrictions against repetitive bending and stooping, with no lifting over 25 pounds.

By decision dated September 9, 2015, OWCP denied the claim, finding that the medical evidence was insufficiently rationalized to establish a causal relationship between the accepted September 22, 2014 incident and the claimed lumbar injury. It explained that Dr. Wang did not provide medical rationale supporting that the accepted incident caused an injury.

On September 21, 2015 appellant requested reconsideration. She did not submit additional evidence.

⁵ The full contents of File No. xxxxxx937 are not before the Board on the present appeal.

By decision dated October 7, 2015, OWCP denied reconsideration, finding that appellant's appeal request form did not raise substantive legal questions or provide new relevant evidence.

Appellant again requested reconsideration. She submitted a September 24, 2015 report from Dr. Wang who noted appellant's history of a lumbar strain with continued radiculopathy "after reaching down to pick up a bucket of magazines." Dr. Wang explained that the "physical mechanical strain of bending down in an awkward position, bending the back, adding the weight strain of picking up a weighted load of magazines in an awkward back-bent position, can cause and contribute to the onset of the injury symptoms described."

Dr. Erin McLaughlin, an attending physician specializing in preventive medicine, provided an October 8, 2015 report reviewing appellant's history of low back pain beginning with the August 2007 occupational injury, with a recrudescence of pain when she bent to pick up some letters in May 2008. Appellant's lumbar symptoms were quiescent from fall 2008 to the summer of 2014. On September 22, 2014 appellant "was sorting mail and [appellant] picked up a bucket about half full of mail (weighing about 10 pounds) and she got a sudden sharp pain in her low back" in the same location and of the same quality as in 2007 and 2008. Conservative measures did not provide relief. On examination, Dr. McLaughlin found a positive straight leg raising test on the right and that appellant was unable to squat. She diagnosed a lumbar strain and prescribed medication and a stretching program.

By decision dated January 13, 2016, OWCP denied the claim, finding that the additional evidence submitted was insufficient to establish causal relationship between the claimed lumbar injury and the accepted September 22, 2014 lifting incident. It found that Dr. Swartz' second opinion report in File No. xxxxxx937 also represented the weight of the medical evidence in the present claim. OWCP also referred to a November 30, 2007 report by a Dr. Feretti under File No. xxxxxx937 diagnosing a temporary aggravation of underlying disc disease. Dr. Feretti's report is not of record under the present claim.

On February 8, 2016 appellant requested reconsideration. She submitted a February 8, 2016 report from Dr. Wang diagnosing a lumbar muscle strain with subsequent lumbar radiculopathy. Dr. Wang opined that appellant remained at maximum medical improvement and would continue to require permanent work restrictions against repetitive bending or lifting over 10 pounds.

By decision dated February 18, 2016, OWCP denied reconsideration, finding that Dr. Wang's February 8, 2016 report was repetitive of evidence previously of record and therefore insufficient to warrant further merit review.

On January 13, 2017 appellant again requested reconsideration through her authorized representative. The representative asserted that OWCP erred by according Dr. Swartz the weight of the medical evidence in the present claim as he was selected only to provide an opinion in File No. xxxxxx937. Also, OWCP relied on a report from Dr. Feretti under File No. xxxxxx937, which was not of record in the present claim. The representative contended that OWCP must double File No. xxxxxx937 with the present claim under File No. xxxxxx749 to ensure a full and fair adjudication of the evidence. He submitted additional evidence.

In a January 6, 2017 report, Dr. Fulton S. Chen, an attending Board-certified physiatrist, provided a history of injury and treatment, including the 2007 and 2008 occupational injuries and the September 22, 2014 lifting incident in the present claim. On examination, he found “diffuse weakness over the right foot ankle dorsiflexors and great toe extensors versus the left,” a positive right straight leg raising test, and “a pressure sensation over the right leg upon a passive right ankle plantar flexion.” Dr. Chen diagnosed L4-5 disc degeneration⁶ with annular tear demonstrated by x-rays,⁷ L5-S1 degenerative disc disease with severe disc space narrowing and Mordic changes, and right-sided lumbar radiculopathy. He explained that severe disc space narrowing with an annular tear, as in appellant’s case, was competent to cause her lumbar pain and radiculopathy. Dr. Chen provided medical literature on disc degeneration which he opined applied to her clinical presentation. Regarding causal relationship, he opined that appellant’s history of lumbar disc degeneration made her more prone to injury due to disc dehydration and subsequent annular fiber weakness at the edges of the spinal discs. Dr. Chen explained that when she bent down to pick up the bucket of magazines on September 22, 2014 and began to lift it upward, forward flexion of the lumbar spine caused compressive biomechanical forces, flattening lumbar discs weakened from preexisting injuries, and degenerative disc disease, causing or aggravating the L4-5 annular tear and aggravating L5-S1 disc degeneration. He noted that appellant’s development of increased low back pain after September 22, 2014 correlated to the described pathophysiologic mechanism of injury. The inflammation caused by the L4-5 annular tear then caused the right-sided radiculopathy. Dr. Chen noted that appellant required permanent work restrictions, and had not yet reached maximum medical improvement.

By decision dated January 25, 2017, OWCP again denied the claim, finding the additional evidence submitted was insufficient to establish causal relationship between the September 22, 2014 lifting incident and the claimed lumbar injury. It found that Dr. Chen’s opinion that appellant had both a preexisting lumbar condition and a late aggravation of it was “conflicting,” diminishing the probative value of his report.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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

⁶ February 5, 2013 lumbar x-rays demonstrated increased degenerative changes at L5-S1. September 18, 2016 lumbar x-rays showed moderate L5-S1 degenerative disc disease.

⁷ A December 13, 2014 lumbar MRI scan showed L5-S1 degenerative changes and a posterior annular tear at L4-5.

⁸ *Supra* note 2.

the employment injury.⁹ 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.¹⁰

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident that is alleged to have occurred.¹¹ 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.¹²

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.¹³

ANALYSIS

Appellant claimed that she sustained a traumatic lumbar injury when she bent over and lifted a bucket of magazines on September 22, 2014. OWCP accepted that this incident occurred as alleged, but it denied the claim as the medical evidence failed to establish a causal relationship between that event and the claimed lumbar injury.

In support of her claim, appellant submitted reports from Dr. Wang, an attending physician Board-certified in occupational medicine, dated from September 22, 2014 onward, diagnosing a lumbar strain and lumbar radiculopathy. She opined on September 24, 2015 that the “mechanical strain of bending down in an awkward position” then lifting a heavy load was competent to cause the onset of a symptomatic lumbar injury. Although Dr. Wang generally supported causal relationship between the accepted September 22, 2014 incident and a lumbar injury, she did not provide detailed rationale explaining her medical reasoning behind this conclusion. Therefore, her opinion is insufficient to meet appellant’s burden of proof.¹⁴

⁹ *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹³ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁴ *Supra* note 12.

Similarly, Dr. Hall, an attending internist, and Dr. McLaughlin, a preventive medicine specialist, both diagnosed a lumbar strain, but did not address causal relationship.¹⁵

Appellant also provided a January 6, 2017 narrative report from Dr. Chen, an attending Board-certified physiatrist. Dr. Chen provided a detailed review of the medical evidence of record, her history of 2007 and 2008 occupational back injuries, and the history of the present claim. He performed a thorough clinical examination and described his clinical findings. Dr. Chen explained how when appellant bent down and lifted the bucket of magazines on September 22, 2014 loaded forward flexion caused compressive biomechanical forces, flattening weakened lumbar discs and impacting the L4-5 annular tear. This aggravated appellant's preexisting lumbar degenerative disc disease, resulting in a new lumbar injury and lumbar radiculopathy.

The Board finds that although Dr. Chen's opinion is insufficiently rationalized to meet appellant's burden of proof to establish causal relationship,¹⁶ it is of sufficient probative quality to warrant additional development.¹⁷ Dr. Chen provided an extremely detailed explanation of how the physical forces of the accepted September 22, 2014 lifting incident resulted in the claimed lumbar injury. However, OWCP did not undertake further development of the medical record, such as referring the record to an OWCP medical adviser, or referring appellant for a second opinion examination.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁸ The case must be remanded to OWCP for preparation of a statement of accepted facts concerning the accepted September 22, 2014 lifting incident and appellant's medical history, and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether she sustained a back injury as alleged. Prior to her referral, OWCP shall combine the present claim file with File No. xxxxxx937.¹⁹ Following this and any other development deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ *Id.*

¹⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

¹⁸ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

¹⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000) (cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2017 is set aside, and the case remanded to OWCP for additional development consistent with this opinion.

Issued: November 9, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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