

FACTUAL HISTORY

On January 4, 2016 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 2, 2016, she sustained a displacement of the spinal disc, dislocation at L4-5, and partial paralysis of the right leg. She reported that she was stepping out of her postal vehicle onto the curb when she felt a pop at the bottom of her lower back near her spinal area. Appellant notified her supervisor, stopped work, and sought emergency medical treatment on the date of the incident. On the reverse side of the claim form, appellant's supervisor checked the box marked "yes" when asked if her knowledge of the facts agreed with the statements made by appellant.³

By letter dated January 27, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her of the type of medical and factual evidence needed and afforded her 30 days to submit the requested information.

In support of her claim, appellant submitted medical and diagnostic reports dated January 2 through 27, 2016 from John Muir Medical Group documenting her hospitalization following her injury. She was admitted to the hospital on January 2, 2016 and she underwent surgery on January 5, 2016.

In a January 2, 2016 emergency department report, Dr. Ellen Leng, Board-certified in emergency medicine, reported that appellant presented to the emergency department with acute and severe pain in the lower back with a pop sensation radiating to the bilateral anterior thighs and back which began when she was getting out of her work vehicle that morning. Appellant reported driving back to the employing establishment and that her postmaster had to bring her to the emergency room due to her near inability to walk. She denied any prior history of similar pain and reported occasional back stiffness. An x-ray of the lumbar spine taken on that date revealed normal vertebral alignment with some anterolisthesis on L4 and L5, no fracture, no dislocation, and no soft tissue swelling. On reevaluation, Dr. Leng noted that there was no evidence for acute bony injury and appellant was in severe pain with significant disability when trying to move. She opined that appellant could have a central disc herniation.

In a January 2, 2016 emergency department follow-up evaluation, Dr. Melanie Lee, Board-certified in internal medicine, reported that appellant had a history of lower back pain and a herniated disc. She noted that appellant was a postal employee who while delivering mail stepped down from her truck to the curb when she heard a pop and experienced a sharp pain in her lower back. Dr. Lee reported that appellant had back problems for over a year and had been diagnosed with a herniated disc at the Kaiser medical center in Vallejo, California, but her neurosurgeon, Dr. Boskovitz, did not recommend surgical intervention. She noted appellant's

³ Appellant has other OWCP claims with dates of injury ranging from March 9, 2013 through October 28, 2014. The record reflects that appellant's October 28, 2014 occupational disease claim was denied by OWCP on March 19, 2015 under OWCP File No. xxxxxx709. Within that claim, an October 28, 2014 magnetic resonance imaging (MRI) scan revealed spinal canal stenosis at L4-5, mild bilateral neural foraminal narrowing of L4-5, and mild instability at L4-5 anterolisthesis worse with flexion. OWCP's March 19, 2015 decision found that appellant failed to establish that she developed a spinal condition causally related to factors of her federal employment, noting that her injury was preexisting and nonindustrial. The record before the Board contains no further information pertaining to appellant's prior claims.

difficulty ambulating and interpreted an x-ray of the lumbar spine which revealed mild degenerative anterolisthesis at L4 on L5 and mild L4-5 disc space narrowing. Dr. Lee further reported that this was a high risk and complex admission and appellant's intractable back pain could be related to a herniated disc.

In a January 3, 2016 diagnostic report, Dr. William Hoddick, a Board-certified radiologist, reported that a lumbosacral spine MRI scan revealed central canal stenosis most severe at L4-5, diffuse degenerative changes most apparent at L3-4 and L4-5, and grade 1 anterolisthesis of L4 relative to L5 with patient's spine.

In a January 3, 2016 neurological consultation, Dr. Terence Chen, a Board-certified neurological surgeon, discussed the January 2, 2016 employment incident and reviewed diagnostic findings. He noted that appellant's lumbar MRI scan revealed severe stenosis at L4-5 with complete loss of cerebrospinal fluid (CSF) space due to a combination of right eccentric disc herniation and a grade 1 spondylolisthesis worsening her stenosis. Dr. Chen diagnosed L4-5 disc herniation, L4-5 spondylostenosis, and grade 1 spondylolisthesis. He explained that appellant had an acute exacerbation of her previously diagnosed condition, possibly from a new or recurrent disc herniation at L4-5. Dr. Chen noted no prior studies were available for comparison.

On January 4, 2015 appellant elected to have surgery due to difficulty walking. The following day, January 5, 2016, Dr. Chen performed bilateral L4-5 laminofacetotomies, bilateral intrafacet autograft and allograft arthrodesis at L4-5, complete right facetectomy at L4-5, and L4-5 transforaminal lumbar interbody autograft arthrodesis after a complete discectomy at L4-5.

Hospital reports dated January 5 through 20, 2016 documented appellant's treatment, physical therapy, and postsurgery progress. Appellant was discharged on January 20, 2016.

In a January 27, 2016 attending physician's report (Form CA-20), Dr. Chen diagnosed lumbar radiculopathy, spondylolisthesis, and stenosis and referenced his January 3, 2016 medical report for further information.

By letter dated February 22, 2016, appellant responded to an OWCP development questionnaire stating that she had attempted to contact OWCP several times regarding her claim and to request authorization for diagnostic testing, but had been unable to speak with a claims examiner.

By decision dated March 7, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her diagnosed lumbar conditions were causally related to the accepted January 2, 2016 employment incident. It noted that the medical evidence of record failed to substantiate how her preexisting, nonindustrial condition of spinal canal stenosis at L4-5, mild bilateral neural foraminal narrowing of L4-5, and mild instability at L4-5 anterolisthesis materially worsened as a result of stepping out of her postal vehicle on January 2, 2016.

On July 8, 2016 appellant, through her representative, requested reconsideration of OWCP's decision. The representative noted submission of additional medical evidence and

argued that the medical reports established causal relationship for a work-related traumatic injury.

In support of her claim, appellant submitted a January 2, 2016 Form CA-16, authorization for examination or treatment, from the employing establishment indicating that she was authorized to seek treatment at John Muir Medical Group for her January 2, 2016 back injury.

Appellant also submitted medical, diagnostic, operative, and progress reports dated January 2 to 20, 2016 documenting her treatment at John Muir Medical Group Hospital.

By decision dated October 3, 2016, OWCP denied modification of its March 7, 2016 decision finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted January 2, 2016 employment incident.

On November 7, 2016 appellant, through her representative, again requested reconsideration. The representative noted submission of medical reports and attachments which established that her lumbar injuries were work related.

Among the documents submitted for consideration was a November 4, 2014 MRI scan of the lumbar spine interpreted by Dr. Sun Jon Young, a Board-certified diagnostic radiologist and neuroradiologist. The report was from the Kaiser Permanente Medical Group in Vallejo, California. In his report, Dr. Young reported that a lumbar spine MRI scan revealed moderate spinal canal stenosis at L4-5, secondary to grade 1 anterolisthesis, disc osteophyte complex, facet arthropathy, and ligamentum flavum redundancy. He further noted mild bilateral neural foraminal narrowing at L4-5.

In a June 17, 2016 report, Dr. Fulton Chen, Board-certified in pain medicine, reported that appellant was evaluated pertaining to a January 2, 2016 injury in relation to her lumbar spine. He noted that she was a full-time postal employee who had delivered mail for the last 18 years. Dr. Chen described appellant's regular employment duties and noted that she began experiencing low back pain in 2014. Appellant underwent conservative care and returned to regular-duty work. Dr. Chen noted that, although appellant's condition had improved, her lower back pain had never resolved. On January 2, 2016 appellant injured her back in the process of delivering mail. While sitting in her postal vehicle, she twisted her body and reached over to the left side to retrieve letters and flats. Then after twisting her body back to the right, appellant stepped out of her vehicle onto the pavement when she heard a pop in her lower back, causing severe lower back pain and numbness in both legs. She returned to the employing establishment and sought emergency medical treatment

Dr. Fulton Chen provided physical examination findings and summarized medical and diagnostic reports dated March 21, 2014 through the present. He reported that her 2016 lumbar MRI scan revealed a right paracentral eccentric disc herniation at L4-5, also confirmed by Dr. Terence Chen, which was not present in her 2014 lumbar MRI scan. Dr. Fulton Chen further reported a moderate spinal stenosis in 2014 which progressed to severe in 2016. He reported that appellant had an unusually high volume of mail to process and deliver on her date of injury as January 2, 2016 was the day after a federal holiday. On that date, appellant reported casing mail for 3.5 hours which entailed bending, stooping, and twisting as she sorted mail from a sorting

case, into a hamper, and finally to her postal vehicle. Appellant estimated handling approximately 65 packages that morning, some weighing up to 50 pounds, and lifting them from her hamper into her postal vehicle. Several of the packages were very heavy and weighed up to 50 pounds. Appellant reported delivering express mail packages to four separate addresses. At each stop, she would twist her back to the left in order to retrieve the mail in the tray on the passenger seat, and then would twist to the right in order to exit her vehicle. After she delivered the express mail, appellant drove her regular route and delivered mail to the first three houses on her route which involved the same movement of twisting left and right to retrieve mail. Her injury occurred when she delivered mail to the fourth house on her route. Appellant recalled that prior to exiting her vehicle, she twisted her back to the left in order to retrieve the mail that was in the tray on the seat to her left, and then twisted her back to the right before stepping out of her vehicle when she heard her back pop and immediately experienced severe numbness and tingling down both legs.

Dr. Fulton Chen reported that appellant had a preexisting degenerative disc disease, facet joint arthropathy, and spinal stenosis at L4-5 level which was documented in her November 4, 2014 lumbar MRI scan. He explained that degenerative disc disease was a condition caused by the breakdown of the discs that separate the spine bones. As the discs degenerated, they lost water content making them less flexible and more prone to injuries such as herniation by activities that placed pressure on the spine. Disc herniation occurred when the outer rim of the disc (annulus) weakened enough so that the inner portion of the disc (nucleus pulposus) ruptured and extruded beyond the outer rim of the disc.

Dr. Fulton Chen reported that the mechanism of injury that caused appellant's acute disc herniation was twisting to the left to retrieve mail and then twisting to the right to exit the vehicle at the fourth house on her route. It was during this work activity that she experienced the pop in her back, indicating that her disc had ruptured. Dr. Chen explained that twisting placed biomechanical stress on the annulus or outer layer of the spinal disc, causing the fibers of the annulus to stretch as they are pulled in the direction of the rotation. In appellant's situation, she twisted to the left and then to the right, so the annulus of her disc was stretched in two different directions in rapid succession. Dr. Chen noted that a simple twist was a well-known cause of disc herniations. He further discussed appellant's preexisting conditions, noting that because of her preexisting disc degeneration, her discs were more prone to injury. Appellant engaged in heavy work activities on the date of injury which made her more prone to injury as her duties required bending, stooping, lifting, and twisting, all of which were risk factors for disc herniations because of the excessive biomechanical strain that they can place on the spine. As such, her heavy and rigorous work activities stressed appellant's degenerative disc condition and made her more susceptible to disc herniation from activities like twisting.

Dr. Fulton Chen also discussed spinal stenosis indicating the narrowing of the spinal canal which contains the spinal cord and spinal nerves. He explained that a herniated disc narrows the spinal canal by occupying the space within the canal. With severe narrowing of the spinal canal, the spinal nerves become injured. Dr. Chen reported that appellant required surgery because her disc herniation caused her spinal stenosis to progress from moderate to severe, resulting in a neurologic injury leading to pain, numbness, and weakness of the legs. Based on appellant's medical history, medical record, and diagnostic test results, Dr. Chen opined that twisting to retrieve the mail and exiting her vehicle placed an additional mechanical load onto

her spine at L4-5, which caused the “pop” and herniation as seen on her MRI scan images. He reported that appellant’s underlying disc degeneration and rigorous work activities on the morning of her injury made her more susceptible to disc herniations. Appellant’s disc herniation led to severe spinal stenosis and resulted in neurological injury. Dr. Chen concluded that appellant’s work-related disc herniation caused a permanent aggravation of her degenerative disc condition and spinal stenosis, explaining that the disc herniation at L4-5 caused the progression of her spinal stenosis from moderate to severe, and this led to near paralysis of her legs prompting her to undergo urgent surgery.

By decision dated February 2, 2017, OWCP denied modification of its October 3, 2016 decision, finding that the medical evidence of record failed to establish that appellant’s diagnosed conditions were causally related to the accepted January 2, 2016 employment incident. It noted that appellant’s statement made no mention of twisting to the left and right, or bending, stooping, and twisting while sorting and casing mail which were not part of the established fact of injury in the claim. OWCP further noted that the history was inconsistent with Dr. Chen’s conclusion that the disc herniation occurred on January 2, 2016, as the medical reports demonstrated that appellant was diagnosed with degenerative disc disease, spinal stenosis, and disc herniation prior to the January 2, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Elaine Pendleton*, *supra* note 5.

opinion evidence supporting such causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

OWCP accepted that the January 2, 2016 employment incident occurred as alleged when appellant stepped out of her vehicle and felt a pop in her lower back. The issue is whether appellant established that the incident caused her an L4-5 disc herniation and aggravation of degenerative disc disease and spinal stenosis.

The Board finds that this case is not in posture for decision and must be remanded for further medical development.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰

The record reflects that appellant sought emergency medical treatment on January 2, 2016 following her work-related injury. She underwent surgery for L4-5 decompression and fusion secondary to grade 1 spondylolisthesis at L4-5 with radiculopathy and L4-5 herniated disc with stenosis on January 5, 2016.

On June 17, 2016 appellant was evaluated by Dr. Fulton Chen. In his report, Dr. Chen summarized appellant's medical history, discussed the January 2, 2016 employment incident, provided findings on physical examination, and provided an opinion regarding the cause of appellant's diagnosed conditions. The Board notes that while Dr. Chen's report is not completely rationalized on the issue of causation, it is consistent in indicating that appellant sustained an employment-related injury and is not contradicted by any substantial medical or factual evidence of record.¹¹

⁸ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, Executrix of the Estate of *Lionel F. Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

¹¹ See *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

Dr. Fulton Chen provided a thorough discussion of appellant's medical history, reporting preexisting conditions of degenerative disc disease, facet joint arthropathy, and spinal stenosis at L4-5 which were documented in her November 4, 2014 lumbar MRI scan. When comparing the results of the 2014 and 2016 lumbar MRI scan, he reported progression of appellant's spinal stenosis from moderate to severe and also found a new right paracentral eccentric disc herniation at L4-5 as evidenced on the 2016 MRI scan. Dr. Chen reported that appellant's disc herniation was caused by her employment activities on January 2, 2016. He described the January 2, 2016 employment incident in detail, and provided a thorough discussion of her work duties on that date which led to her current lumbar disc conditions.¹² Dr. Chen reported that the mechanism of injury that caused appellant's acute disc herniation was twisting to the left to retrieve mail and then twisting to the right to exit the vehicle at the fourth house on her route. It was during this work activity that she experienced the pop in her back, indicating that her disc had ruptured.¹³

Dr. Fulton Chen properly discussed how appellant's preexisting conditions affected her work injury.¹⁴ He explained that degenerative disc disease was a condition caused by the breakdown of the discs that separate the spine bones. As the discs degenerated, they lost water content making them less flexible and more prone to injuries such as herniation by activities that placed pressure on the spine. Disc herniation occurred when the outer rim of the disc (annulus) weakened enough so that the inner portion of the disc (nucleus pulposus) ruptured and extruded beyond the outer rim of the disc. Dr. Chen further explained that twisting placed biomechanical stress on the annulus or outer layer of the spinal disc, causing the fibers of the annulus to stretch as they are pulled in the direction of the rotation. In her situation, appellant twisted to the left and then to the right, so the annulus of her disc was stretched in two different directions in rapid succession. Dr. Chen noted that a simple twist was a well-known cause of disc herniations, and given appellant's preexisting disc degeneration, her discs were more prone to injuries. He opined that twisting to retrieve the mail and exiting her vehicle placed an additional mechanical load onto her spine at L4-5, which caused the "pop" and herniation as seen on her MRI scan images. Dr. Chen reported that appellant's underlying disc degeneration and rigorous work activities on the morning of her injury made her more susceptible to her disc herniation which led to severe spinal stenosis and resulted in neurological injury. He concluded that appellant's work injury of disc herniation caused a permanent aggravation of her degenerative disc condition and spinal stenosis. Specifically, the disc herniation at L4-5 caused progression of spinal stenosis from moderate to severe, and this led to near paralysis of her legs prompting her to undergo urgent surgery.

While Dr. Fulton Chen's report is not fully rationalized, he provided a clear opinion based on examination findings and an accurate factual and medical background, that the

¹² See *M.D.*, Docket No. 17-0430 (issued August 21, 2017). Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of the claimed work event caused or aggravated the claimed condition.

¹³ See *D.S.*, Docket No. 17-0996 (issued August 16, 2017). The medical report should provide a discussion of the mechanism of injury or other explanation as to the relationship between a diagnosed condition and the employment incident.

¹⁴ See *supra* note 12. A rationalized medical opinion is especially necessary in light of a preexisting degenerative condition.

January 2, 2016 employment incident caused appellant's disc herniation at L4-5 which resulted in a permanent aggravation of her degenerative disc disease and spinal stenosis. Additionally, his opinion is not contradicted by any substantial medical or factual evidence of record.¹⁵

OWCP found that appellant's disc herniation was a preexisting condition unrelated to her employment duties. It relied on the January 2, 2016 emergency department report to determine that appellant's herniated disc was a preexisting condition. In the report, Dr. Lee reported that appellant had back problems for over a year and was diagnosed with herniated disc at the Kaiser Permanente in Vallejo, California. The Board finds that there is nothing in the medical record to establish that appellant was previously diagnosed with a herniated disc at L4-5 prior to the January 2, 2016 employment incident. Moreover, the November 4, 2014 lumbar MRI scan was submitted from Kaiser Permanente in Vallejo, California. Contrary to the history reported by Dr. Lee *via* appellant's account, the lumbar MRI scan provides no findings pertaining to a disc herniation at L4-5 and fails to support the statement that appellant was previously diagnosed with a herniated disc at the Kaiser in Vallejo, California.

With respect to the preexisting conditions of degenerative disc disease and spinal stenosis, there is no requirement that the federal employment be the only cause of appellant's injury. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, she is entitled to compensation.¹⁶ As previously noted, Dr. Fulton Chen provided a thorough opinion explaining how appellant's work-related disc herniation caused a permanent aggravation of her degenerative disc condition and spinal stenosis.

The Board also notes that OWCP discounted the opinion of Dr. Fulton Chen's discussion of additional employment duties having occurred on January 2, 2016, whereas appellant only reported an injury from exiting her postal vehicle when she experienced a pop in her back. The Board notes that Dr. Chen's additional details pertaining to appellant's employment duties on that date does not negate his opinion on causal relationship or contradict appellant's account of the employment incident.¹⁷ Nor is it unreasonable to determine that appellant's duties involved twisting left and right to retrieve mail in her vehicle for delivery.

Thus, the Board finds that the opinion of Dr. Fulton Chen was supportive, bolstered by objective findings, and based on a firm diagnosis and accurate history.¹⁸ While his report is not sufficient to meet her burden of proof to establish her claim, it is nevertheless sufficient to require OWCP to further develop the medical evidence and the case record.¹⁹

¹⁵ See *J.S.*, Docket No. 16-0777 (issued January 3, 2017).

¹⁶ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹⁷ See *Willie J. Clements*, 43 ECAB 244 (1991).

¹⁸ See *L.D.*, Docket No. 09-1503 (issued April 15, 2010).

¹⁹ See *P.K.*, Docket No. 08-2551 (issued June 2, 2009); see also *Horace Langhorne*, 29 ECAB 820 (1978).

The Board will remand the case for further development of the medical evidence.²⁰ On remand, OWCP should prepare a statement of accepted facts and obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's lumbar disc herniation at L4-5, spinal stenosis, and degenerative disc disease are causally related to the January 2, 2016 employment incident, either directly or through aggravation, precipitation, or acceleration.²¹ Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's traumatic injury claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: February 12, 2018
Washington, DC

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

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

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

²⁰ An authorization for examination and/or treatment form (Form CA-16) was completed by an employing establishment official on January 2, 2016 and purported to authorize treatment by the John Muir Medical Group. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

²¹ *P.A.*, Docket No. 09-0319 (issued November 23, 2009).