

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

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**A.C., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS ADMINISTRATION MEDICAL** )  
**CENTER, Buffalo, NY, Employer** )  
\_\_\_\_\_ )

**Docket No. 18-0683**  
**Issued: November 6, 2018**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 9, 2018 appellant filed a timely appeal from a November 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a lumbar injury causally related to an accepted April 27, 2016 employment incident.

**FACTUAL HISTORY**

On April 27, 2016 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained a lumbosacral strain/sprain while assisting in the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

podiatry clinic. On the reverse side of the claim form, appellant's supervisor corroborated her account of the April 27, 2016 events. Appellant stopped work on the date of injury and has not returned.

In support of her claim, appellant submitted work excuse slips from Carrie M. Van Grol, a nurse practitioner, and May 13, 2016 physical therapy treatment notes.

By development letter dated July 7, 2016, OWCP notified appellant of the type of factual and medical evidence necessary to establish her claim. Appellant was also provided a list of questions for her physician inquiring how the alleged employment incident would have caused or contributed to the claimed lumbar injury. OWCP advised that a physician's detailed, well-rationalized opinion on causal relationship was crucial to her claim. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a July 11, 2016 statement in which she described removing and replacing patients' shoes and socks throughout her April 27, 2016 work shift at the podiatry clinic, which required repetitive stooping, crouching, and bending.

A June 10, 2016 lumbar magnetic resonance imaging (MRI) scan demonstrated multilevel degenerative changes, most pronounced at L2-3.<sup>2</sup>

By decision dated August 11, 2016, OWCP denied the claim as causal relationship had not been established. It accepted that the April 27, 2016 employment incident occurred at the time, place, and in the manner alleged. However, OWCP denied the claim as the medical evidence of record was insufficient to establish causal relationship between the accepted employment incident and the claimed lumbar injury.<sup>3</sup>

On January 26, 2017 appellant requested reconsideration and submitted additional medical evidence.

Appellant provided notes dated from April 29 to August 2017 signed by Ms. Van Grol and countersigned by Dr. Rhonda Peterson, an attending Board-certified family practitioner. Dr. Peterson related appellant's account of repetitive bending, crouching, and stooping while assisting patients in the podiatry clinic on April 27, 2016. On examination, she noted lumbosacral tenderness and bilaterally positive straight leg raising tests. Dr. Peterson diagnosed chronic lumbar pain with bilateral radiculopathy. She prescribed medication and physical therapy.

In a report dated August 8, 2016, Dr. Peterson again related appellant's account of repetitive bending on April 27, 2016 while assigned to the podiatry unit. She noted that physical therapy and medication had failed to relieve appellant's chronic lumbar pain with bilateral radiculopathy. Dr. Peterson noted that a June 10, 2016 MRI scan demonstrated significant

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<sup>2</sup> Appellant also submitted physical therapy treatment notes dated in June and July 2016.

<sup>3</sup> On August 24, 2016 and on November 1, 2016 appellant requested a telephonic oral hearing before an OWCP hearing representative. By decision dated February 17, 2017, OWCP denied appellant's request for an oral hearing as it was not timely filed within 30 days of OWCP's August 11, 2016 decision. It exercised its discretion and further denied the claim as the issue involved could be addressed equally well by a valid request for reconsideration.

degenerative changes at L2-3. She diagnosed a herniated lumbar disc with radiculopathy. Dr. Peterson opined that the “repeated work duties of having to bend over, having to lift the legs and feet of patients -- taking off their shoes and socks, while the patient was in a low position chair at the podiatry clinic is a direct cause of the injury to [appellant].” She noted that, prior to the April 27, 2016 injury, appellant had worked in the podiatry clinic on other dates, but had not sustained any injury. Dr. Peterson found appellant totally disabled from work.<sup>4</sup>

By decision dated April 13, 2017, OWCP denied modification of its August 11, 2016 decision, finding that the additional evidence submitted was insufficiently rationalized to meet appellant’s burden of proof to establish causal relationship between the accepted April 27, 2016 employment incident and the claimed lumbar injury.

On April 18, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a report dated February 15, 2017, Dr. Gregory Castiglia, a Board-certified neurosurgeon to whom Dr. Peterson referred appellant for a surgical consultation, noted a history of injury and treatment. On examination he found restricted lumbar motion in all planes. Dr. Castiglia noted that a lumbar spine MRI scan demonstrated annular tears at L2-3 and L5-S1, and a broad-based disc bulge at L4-5 with mild-to-moderate foraminal narrowing bilaterally. He diagnosed lumbar radiculopathy and lumbar degenerative disc disease. Dr. Castiglia opined that appellant’s symptoms “appeared to be” directly related to an employment incident dating back to April 2016.

A May 23, 2017 lumbar MRI scan demonstrated an annular bulge at L1-2 with an annular tear, an annular bulge at L2-3 extending into both neural foramina, a L2-3 annular tear, moderate canal stenosis at L4-5 due to disc extrusion and an annular tear, and central canal stenosis at L5-S1 due to a central disc herniation.

In a report dated April 26, 2017, Dr. Joanne Wu, a Board-certified physiatrist to whom Dr. Peterson referred appellant for a consultation, provided a history of injury and treatment. She related appellant’s symptoms of lumbar and bilateral lower extremity pain and paresthesias. On examination, Dr. Wu observed restricted lumbar motion and bilateral lumbar paraspinal spasms. She diagnosed degenerative lumbar disc disease, lumbar radiculopathy, and paraspinal muscle spasms. Dr. Wu prescribed medication and physical therapy. She opined that the April 27, 2016 incident was competent to produce appellant’s symptoms.

In notes dated from May 19, 2017 to early July 2017, Dr. Peterson noted appellant’s worsening lumbar pain with bilateral radiculopathy. Medication, physical therapy, and chiropractic manipulation had failed to ameliorate appellant’s symptoms. Dr. Peterson diagnosed chronic low back pain, lumbar disc disease, sciatica, and left leg weakness. She found appellant totally disabled from work. Dr. Peterson also provided a July 5, 2017 narrative report in which she summarized appellant’s history of injury and treatment. She related appellant’s descriptions of sudden “searing, knife-like, stabbing back pain” during her April 27, 2016 work shift. Dr. Peterson opined that appellant sustained an occupational lumbar injury in the podiatry clinic

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<sup>4</sup> Appellant also submitted physical therapy treatment notes dated from May 13, 2016 to March 16, 2017. She also provided notes from Ms. Van Grol dated July 19 and August 17, 2016.

on April 27, 2016, which rendered her totally disabled from work due to severe, chronic lumbar pain.<sup>5</sup>

By decision dated July 13, 2017, OWCP denied modification of its April 13, 2017 decision, finding that the additional evidence submitted in support of reconsideration contained insufficient medical rationale to meet appellant's burden of proof to establish causal relationship.

On August 8, 2017 appellant requested reconsideration and submitted additional medical evidence.<sup>6</sup>

In a May 11, 2017 note, Dr. Peterson found appellant's condition unchanged.

In a report dated June 21, 2017, Dr. Jaffar Siddiqui, a Board-certified orthopedic surgeon associated with Dr. Castiglia, opined that the April 27, 2016 occupational incident was competent to produce appellant's ongoing symptoms. He recommended a caudal epidural injection.

In a report dated July 12, 2017, Dr. Castiglia noted that appellant's condition remained unchanged. He found that appellant remained totally disabled from work due to sequelae of the April 27, 2016 occupational incident.

In an August 29, 2017 narrative report, Dr. Peterson reviewed appellant's history of injury and treatment. She opined that repetitive awkward crouching, stooping, bending, leaning, twisting, lifting, and pushing caused or aggravated appellant's April 27, 2016 employment related lumbar condition. Dr. Peterson explained that these movements strained and placed additional stress on appellant's ligaments, muscles, and joints between the spine and the sacroiliac joints, weakening and damaging discs involved, which in turn caused annular tears that lead to disc bulges and nerve root compression. The nerve root compression caused the onset of sudden, severe lumbar pain with radiculopathy. Dr. Peterson noted that prior to the injury appellant had been assigned to the podiatry unit on other occasions and had experienced transient lumbar discomfort, but had not sustained an injury. She related that, prior to April 27, 2016, appellant was a physically active person.

By decision dated November 6, 2017, OWCP denied modification of its July 13, 2017 decision, finding that the additional evidence submitted in support of reconsideration was insufficient to establish causal relationship between the accepted April 27, 2016 occupational incident and the claimed lumbar injury.

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<sup>5</sup> Appellant also submitted an April 25, 2017 physical therapy treatment note.

<sup>6</sup> May 6, 2016 lumbar x-rays demonstrated mild-to-moderate degenerative changes. February 15, 2017 lumbar x-rays showed mild straightening of the lumbar lordosis, multilevel spondylitic changes, advanced space narrowing and facet joint arthropathy at L4-5 and L5-S1. Appellant also submitted copies of evidence previously of record.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>7</sup> 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> 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.<sup>9</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>10</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>11</sup> 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 employee.<sup>12</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>13</sup>

## ANALYSIS

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

OWCP accepted that the incident occurred at the time, place, and in the manner alleged, but denied the claim as the medical evidence of record was insufficient to establish causal relationship.

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<sup>7</sup> *Supra* note 1.

<sup>8</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>9</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>10</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>11</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>13</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

In support of her claim, appellant submitted medical evidence, including several reports from April 29, 2016 onward from Dr. Peterson, an attending Board-certified family practitioner. Dr. Peterson consistently provided an accurate history of injury and detailed clinical findings. In an August 29, 2017 narrative report, she explained the chain of pathophysiologic mechanisms whereby the accepted repetitive bending and stooping stressed appellant's ligaments, muscles, and joints between the spine and the sacroiliac joints, weakening and damaging intervertebral discs, which caused annular tears, resultant disc bulging, and finally nerve root compression.

Appellant also submitted reports from Dr. Castiglia, a Board-certified neurosurgeon, who opined on February 15 and July 12, 2017 that the accepted April 27, 2016 occupational incident was competent to cause appellant's chronic lumbosacral pain with bilateral radiculopathy. Similarly, Dr. Siddiqui, a Board-certified orthopedic surgeon, and Dr. Wu, a Board-certified physiatrist, opined that the accepted occupational incident caused appellant's lumbar condition.

The Board finds that the medical opinion of Dr. Peterson is sufficient to require further development of the medical evidence as it relates to whether appellant's diagnosed lumbar conditions are causally related to the accepted April 27, 2016 occupational incident. Dr. Peterson provided an accurate history of the accepted repetitive bending and stooping, and attributed the diagnosed lumbar conditions to it. Her opinion is of sufficient probative quality, given the absence of any opposing medical evidence, to require further development of the record.<sup>14</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>15</sup> OWCP has an obligation to see that justice is done.<sup>16</sup>

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, it shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>14</sup> See *S.S.*, Docket No. 17-0322 (issued June 26, 2018); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>15</sup> *S.S.*, *supra* note 13. See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

<sup>16</sup> *S.S.*, *supra* note 13, *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: November 6, 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