

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

C.S., Appellant	)	
	)	
and	)	<b>Docket No. 19-0421</b>
	)	<b>Issued: August 1, 2019</b>
SOCIAL SECURITY ADMINISTRATION,	)	
Chicago, Il, Employer	)	
	)	

*Appearances:*  
Stephanie N. Leet, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 19, 2018 appellant, through counsel, filed a timely appeal from a June 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 a back injury causally related to the accepted September 13, 2015 employment incident.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 27, 2015 appellant, then a 30-year-old service representative, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2015 she injured her back when a coworker and her supervisor accidentally struck her in the back with a table they were folding while she was in the performance of duty. She also provided a narrative statement explaining that on September 13, 2015 she refused medical treatment, took pain medication, and went to bed. On September 14, 2015 appellant sought medical attention and her physician provided additional pain medication. On September 15, 2015 she received an epidural steroid injection.

On October 29, 2015 appellant's supervisor submitted a statement and confirmed that on September 13, 2015 while an employee was attempting to close a table, part of the metal leg of the table struck appellant in her back. He noted that it did not seem to be a heavy hit, but might have been hard enough to cause a bruise. Appellant's supervisor also noted that appellant had a preexisting back condition that was causing her pain before the claimed. September 13, 2015 employment incident.

On October 29, 2015 appellant submitted a September 30, 2015 magnetic resonance imaging (MRI) scan of her lumbar spine. This scan demonstrated degenerative lumbar spondylosis, posterior annular tears of L3-4, L4-5, and L5-S1 discs, and at L2-3 mild left foraminal stenosis. Appellant also provide screenshots of her texts with Dr. Mohammed A. Alawad, a Board-certified internist, reporting that her back and leg pain were intolerable on September 15, 2015. Dr. Alawad arranged for appellant to receive an injection. In a note dated October 22, 2015, Dr. Keith L. Schaible, a Board-certified neurologist, diagnosed herniated disc and indicated that appellant underwent surgery on October 12, 2015.

In a November 3, 2015 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from her. OWCP afforded appellant 30 days to respond.

On November 11, 2015 Dr. Alawad noted appellant's preexisting discogenic lower back pain and referenced a July 18, 2015 MRI scan. He reported that she was able to function until she was injured at work in September 2015 at which time she experienced severe lower back pain and was referred to a neurosurgeon. Appellant underwent an additional MRI scan on September 30, 2015 which showed a new disc injury. Dr. Alawad reported that appellant's examination on September 14, 2015 showed severe lower extremity weakness and decreased sensation with radiculopathy. He found that she continued to experience left foot drop and weakness in her left lower extremities.

By decision dated December 15, 2015, OWCP denied appellant's claim finding that she had not established causal relationship between her claimed back conditions and the accepted September 13, 2015 employment incident.

On January 14, 2016 appellant, through counsel, requested an oral hearing from an OWCP hearing representative. Appellant attempted to call-in for the scheduled telephone hearing on September 7, 2016, but there was a telephone connection problem and she agreed to convert the oral hearing to a review of the written record.

Appellant submitted the July 18, 2015 lumbar MRI scan report which demonstrated posterior annular tears at L2-3 and L3-4, disc bulges at L2-3, L3-4, L4-5, and L5-S1.

In a June 7, 2016 report, Dr. Alawad noted that appellant first reported low back pain in June 2015, but that she continued to work until September 13, 2015 when she was struck in the back by a table leg. Appellant experienced rapid deterioration on September 14, 2015 and exhibited new symptoms including foot drop, lower extremity weakness, and decreased sensation with radiculopathy. She underwent a second MRI scan on September 30, 2015 which demonstrated progression with increase in the dimensions of the disc fragment extrusion and increased spinal stenosis at L4-5 as well as the development of posterior annual tears of L4-5 and L5-S1. Dr. Alawad concluded that appellant's discogenic low back pain and radiculopathy was aggravated by her September 13, 2015 work incident.

On June 21, 2016 appellant underwent electromyogram and nerve conduction velocity (EMG/NCV) studies which demonstrated L5 radiculopathy on the left. She also provided her more recent July 13, 2016 MRI scan.

By decision dated November 22, 2016, OWCP's hearing representative set aside the December 15, 2015 decision and remanded the case for further development of the medical evidence by OWCP, including referral to a second opinion physician to be followed by a *de novo* decision.

In a December 20, 2016 development letter, OWCP again advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from her. OWCP afforded appellant 30 days to respond.

On February 3, 2017 appellant submitted her medical records. On July 14, 2015 Dr. Alawad noted her continued reports of back pain as well as shooting pains down into her left leg. He diagnosed discogenic low back pain. On August 24, 2015 appellant again reported back pain radiating into her left leg. Dr. Alawad diagnosed spinal stenosis. He repeated this diagnosis on September 8, 2015.

On September 10, 2015 Dr. Schaible noted that appellant's two-year history of back pain seemed to be progressing with bilateral leg pain and left lateral lower leg numbness. He reviewed her MRI scan and found that she might be symptomatic from L4-5 disc protrusion. Dr. Schaible suggested that surgery was an option.

In a note dated September 12, 2015, Dr. Alawad noted that appellant was reporting increasing back pain and numbness beginning two days prior. He found that her reflexes were normal, positive straight leg raising bilaterally, normal motor and sensory examination, and normal gait. Dr. Alawad diagnosed spinal stenosis and lumbosacral radiculopathy. He completed a work release note on September 15, 2015 and indicated that appellant was experiencing severe pain due to a herniated disc.

On September 26, 2015 Dr. Alawad noted that appellant was experiencing severe pain and scheduled for surgery on October 5, 2015. He noted that she was experiencing left leg numbness, weakness, and tingling. Dr. Alawad diagnosed lumbosacral radiculopathy and bulging lumbar disc. He reported that appellant's sensory examination and her gait were normal. In a September 28, 2015 note, Dr. Alawad reported that she had lifted her son and felt she pulled

something in her back. He found that appellant had left leg numbness and weakness. Dr. Alawad found that she was walking with a noticeable limp. He diagnosed lumbar radiculopathy and leg weakness. Dr. Alawad noted that she was scheduled for back surgery with Dr. Schaible on October 12, 2015.

On October 29, 2015 Dr. Alawad examined appellant following her October 12, 2015 lumbar laminectomy and discectomy at L4-5 and L5-S1. Appellant described her September 13, 2015 employment incident when she was struck by a folding table as she was bending forward and gathering some papers. Dr. Alawad noted that she had reported this incident to Dr. Schaible on October 13, 2015 following her surgery. He found that appellant's September 30, 2015 MRI scan showed progression with increase in dimension of the disc fragment extrusion and increase in spinal canal stenosis at L4-5 as well as development of posterior annular tear of L4-5 and L5-S1 which was not observed on the July 18, 2015 MRI scan.

In notes dated October 22, November 12, and December 17, 2015, Dr. Schaible reported that appellant continued to experience symptoms of postoperative discomfort and foot drop.

On December 10, 2015, February 9, and March 8 and 17, 2016, Dr. Alawad examined appellant due to back pain due to spinal stenosis and a September 2015 employment injury when a folding table fell from another worker's hand and hit her back. Appellant did not fall, but was jolted forward. Since then she experienced pain with associated numbness in the left leg. Dr. Alawad diagnosed lumbar radiculopathy, discogenic low back pain, status post lumbar laminectomy, bilateral foot drop, and hypothyroidism.

On March 22, 2016 Dr. Schaible noted that appellant had degenerative changes at L2-3, and L3-4 with postoperative changes at L4-5 and L5-S1. He found no need for further surgery.

In a note dated April 21, 2016, Dr. Alawad reported that appellant continued to experience chronic back pain and numbness of the left lateral leg down to her toes. He diagnosed degenerative lumbar disc, abnormal weight gain, and depression. On June 7, 2016 Dr. Alawad noted that appellant received epidural steroid injections. In his November 22, 2016 note, he diagnosed low back pain with acute worsening of a chronic condition.

On July 6, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Allan Brecher, a Board-certified orthopedic surgeon, for a second opinion examination.

In his September 15, 2017 report, Dr. Brecher noted appellant's history of injury including preexisting back pain. He reviewed appellant's diagnostic tests and medical records. Dr. Brecher performed a physical examination and found positive straight leg raising on the left and left foot drop. He reported global decreased sensation below the left knee. Dr. Brecher noted that appellant did not report her work injury to her physicians until after her surgery. He found that appellant's physical findings changed between September 26 and 28, 2015 which appeared to be after she picked up her son earlier in September 2015. Dr. Brecher opined that appellant's September 13, 2015 employment incident had not caused or contributed to her back pain as her back condition had worsened after lifting her son. He noted that appellant reported seeking medical attention two days after her September 13, 2015 employment incident, but that there was no documentation of this visit. Dr. Brecher found that Dr. Alawad's notes did not support that the September 13, 2015

incident caused a change in appellant's back condition and concluded that her back condition was preexisting and was not caused or aggravated due to her accepted employment incident.

By decision dated January 11, 2018, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish causal relationship between her diagnosed back conditions and the accepted September 13, 2015 employment incident.

On February 7, 2018 appellant, through counsel, requested a review of the written record by an OWCP hearing representative.

On October 7, 2016 Dr. Alawad reported that appellant began experiencing back pain on June 15, 2015 and underwent a lumbar spine MRI scan on July 18, 2015 which demonstrated L5-S1 compression of the nerve roots and mild stenosis. He noted that on September 13, 2015 she was struck by a table at work and experienced deterioration in her back pain which prevented her from functioning. Dr. Alawad reported that appellant underwent a second MRI scan on September 30, 2015 which showed a significant new lesion, increased disc disease, ruptured discs, and significant worsening of her spinal stenosis. He opined that these additional injuries were due to her incident at work. Dr. Alawad concluded that when appellant was struck by the table at work she sustained ruptured discs and muscle spasms which lead to worsening of disc disease which in turn led to worsening of her spinal stenosis.

In a report dated February 5, 2017, Dr. Alawad noted that appellant sustained a back injury at work on September 13, 2015 and was unable to tolerate physical therapy on September 14, 2015. She underwent an urgent epidural injection to the lumbar spine on September 15, 2015 with no improvement. Dr. Alawad reported that she was scheduled for back surgery prior to September 28, 2015. He noted that appellant was functioning both at work and at home until the September 13, 2015 employment incident. Dr. Alawad further noted that back surgery was scheduled before she attempted to lift her child and that her MRI scan prior to September 18, 2015 was positive for discogenic disc disease. He opined that attempting to lift her child had not worsened or caused a disc injury.

On February 1, 2018 Dr. Alawad attributed appellant's conditions of discogenic low back pain, depression, left foot drop, and radicular pain to her September 13, 2015 employment incident. He noted that she was struck in the back with a table. On September 14, 2015 Dr. Alawad was able to secure an appointment in a pain clinic where appellant received an epidural injection. He opined that she sustained an aggravation of her low back pain and radiculopathy secondary to the September 13, 2015 employment incident.

By decision dated June 27, 2018, OWCP's hearing representative<sup>3</sup> found that Dr. Brecher's report was entitled to the weight of the medical evidence and that appellant had not established a causal relationship between her September 13, 2015 employment incident and her ongoing back conditions.

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<sup>3</sup> OWCP's hearing representative noted that appellant had filed a separate occupational disease claim alleging aggravation of her underlying back condition which was denied in OWCP File No. xxxxxx920.

## 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 timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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 or she actually experienced the employment incident at the time and place, and in the manner alleged.

Second, is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish a causal relationship.<sup>9</sup>

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 opinion evidence sufficient to establish such causal relationship.<sup>10</sup> 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

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> See *M.J.*, Docket No. 17-0725 (issued May 17, 2018); see also *Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>10</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

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.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds this case not in posture for decision.

Appellant's physician, Dr. Alawad, opined that appellant's underlying back conditions were aggravated by her accepted September 13, 2015 employment incident. In reports dated February 5, 2017 and February 1, 2018, he noted that appellant was unable to tolerate physical therapy on September 14, 2015. Dr. Alawad also reported that appellant underwent an urgent epidural injection to the lumbar spine on September 15, 2015. These reports confirm appellant's narrative statement and the text messages appellant submitted regarding her medical treatment immediately following the September 13, 2015 employment incident. Dr. Alawad also submitted a series for reports from October 29, 2015 through February 1, 2018 supporting causal relationship through an aggravation or acceleration of appellant's underlying back condition by the September 13, 2015 employment incident.

In his September 15, 2017 report, Dr. Brecher, OWCP's second opinion physician, noted that appellant alleged that she sought medical treatment two days after the September 13, 2015 employment incident, but that there was no documentation in the record supporting this statement. He found that Dr. Alawad's notes did not support that the claimed September 13, 2015 employment injury aggravated or accelerated her preexisting back condition. Dr. Brecher attributed appellant's additional back conditions as identified on the September 30, 2015 MRI scan to her nonemployment-related lifting of her son between September 26 and 28, 2015. Based on Dr. Brecher's September 15, 2017 report, OWCP denied appellant's traumatic injury claim.

The Board finds that Dr. Brecher's September 15, 2017 report was not based on a proper factual background. He based his conclusion that appellant's underlying back condition was not aggravated or accelerated by her September 13, 2015 employment incident, in part, on his finding that there was no medical evidence supporting that she sought medical treatment immediately following this injury. As noted above, Dr. Alawad's February 5, 2017 and February 1, 2018 reports indicate that appellant did in fact require and receive additional medical treatment in the form of an epidural steroid injection within two days of the accepted employment incident on September 13, 2015. When a second opinion physical renders a medical opinion based on an

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<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *D.S.*, Docket No. 17-1359 (issued May 3, 2019).

incomplete or inaccurate review of the facts, the probative value of the opinion is diminished or negated altogether.<sup>13</sup>

Once OWCP undertakes development of the medical evidence it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>14</sup> Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP should provide Dr. Brecher with Dr. Alawad's additional reports and request that he provide a supplemental report with a rationalized opinion with regard to whether appellant's accepted September 13, 2015 employment incident contributed to her underlying preexisting back condition through acceleration or aggravation. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion of the Board.

Issued: August 1, 2019  
Washington, DC

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

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

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

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<sup>13</sup> See *K.S.*, Docket No. 18-0845 (issued October 26, 2018); *R.B.*, Docket No. 14-1043 (issued December 12, 2014); *V.H.*, Docket No. 14-0433 (issued July 3, 2014).

<sup>14</sup> See *M.C.*, Docket No. 09-1880 (issued June 21, 2010); *George Tseko*, 40 ECAB 948 (1989).