

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted December 24, 2015 employment incident.

FACTUAL HISTORY

On January 4, 2016 appellant, then a 53-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a “back sprain/spasms and possible sciatica” at work on December 24, 2015 as a result of lifting a box of computer paper in the lower level warehouse. She stopped work on December 28, 2015.

In two reports dated December 27, 2015, Dr. Elie Harmouche, an emergency medicine physician, diagnosed sciatica, left, and advised that appellant was capable of returning to work on January 1, 2016.

A December 27, 2015 lumbar computerized tomography (CT) scan demonstrated multi-level degenerative changes most significant at L4-5 and L5-S1. A left paracentral and foraminal disc protrusion at L5-S1 was identified as the mostly likely structural abnormality to cause left sciatica.

On January 4, 2016 appellant was seen in the employing establishment’s occupational health unit. Dr. Sudhir G. Rao, a Board-certified internist, noted that appellant had left thigh pain since December 24, 2015 at 2:00 p.m. after lifting a box weighing approximately 25 pounds at work. Appellant felt a pop in her left thigh, felt pain, and then limped to her workstation. Dr. Rao indicated that appellant went to see her own physician for her left thigh muscle injury.

In a January 6, 2016 attending physician’s report (Form CA-20), Dr. Anupama Nair, a Board-certified internist, diagnosed low back pain with left-sided sciatica and noted that appellant was seen in June 2015 with a six-to-seven-month history of low back pain. She checked a box marked “Yes” indicating that the condition was caused or aggravated by appellant’s federal employment because she stated that her pain worsened after lifting an object at work.

On January 7, 2016 Dr. Lester Kobylak, a Board-certified internist, advised that appellant was totally disabled from work until January 21, 2016 causally related to her diagnosis of sciatica due to a disc protrusion.

In two reports dated January 21, 2016, Dr. Max Kole, a Board-certified neurosurgeon, diagnosed lumbosacral spondylosis without myelopathy and advised that appellant was totally disabled from January 21 to February 8, 2016 for a workup of lumbar radiculopathy and further evaluation and testing.

A February 8, 2016 lumbar magnetic resonance imaging (MRI) scan revealed spondylotic and degenerative changes, greatest at L4-5 and L5-S1.

In reports dated February 11, 17, 18, and 24, 2016, Dr. Zarina Alam, a Board-certified internist, diagnosed spondylosis of the lumbar spine.⁴ She advised that appellant was totally disabled from work and required a special chair to provide spine support.

In a March 7, 2016 development letter, OWCP advised appellant of the need for additional medical evidence in support of her claim for FECA benefits. It afforded her 30 days to submit the requested medical evidence.

Subsequently, OWCP received a February 25, 2016 report from Dr. Kole who noted that a recent MRI scan of appellant's lumbar spine showed L5-S1 left lateral and foraminal large disc bulge. He indicated that appellant continued to have sharp left hip, buttock, and posterior leg pain.

Appellant submitted two reports dated March 7 and 23, 2016 from Dr. Alam who continued to advise that appellant was totally disabled from work.

In an attending physician's report (Form CA-20) dated March 11, 2016, Dr. Alam diagnosed lumbosacral spondylosis and checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by her federal employment.

A March 21, 2016 lumbar CT scan revealed no acute osseous abnormality and multilevel degenerative changes from L1-2 through L5-S1.

On March 28, 2016 Dr. Alam noted that on December 24, 2016 appellant was at work when she bent over to pull an object, which collapsed and felt a sudden onset of lower back pain. Since that time, appellant had been experiencing constant, severe pain in her lower back, which radiated to her left hip. Dr. Alam indicated that appellant sought treatment of her pain and a lumbar spine MRI scan, dated February 8, 2016, showed degenerative changes and compression of the L5 and S1 nerve roots on the left.

By decision dated April 12, 2016, OWCP accepted that the December 24, 2015 employment incident occurred as alleged, but denied the claim because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the December 24, 2015 work incident.

On April 19, 2016 appellant requested an oral hearing by a representative of OWCP's Branch of Hearings and Review and submitted a narrative statement reiterating the factual history of her claim.

In reports dated May 3 and June 22, 2016, Dr. Alam advised that appellant remained totally disabled from work.

On October 19, 2016 appellant, through counsel, also requested reconsideration and submitted an August 31, 2016 report from Dr. Alam who noted that appellant continued to suffer low back pain and had not improved with physical therapy.⁵ Dr. Alam advised that appellant was

⁴ On January 4, 2016 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) by Dr. Alam for appellant's sciatica.

⁵ On October 20, 2016 OWCP advised counsel that appellant had already requested an oral hearing, and that only one form of appeal could be pursued at a time.

incapable of sitting for prolonged periods of time, walking or standing for more than five minutes, or bending or lifting objects greater than 10 pounds. She noted that appellant had developed worsening hypertension, likely related to the pain and had developed depression due to the chronic pain.

Appellant also submitted an emergency room report, dated November 28, 2016, from Dr. Stephanie Stokes-Buzzelli, a Board-certified emergency medicine specialist, who diagnosed a seizure.

A telephonic hearing was held before an OWCP hearing representative on January 18, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated March 9, 2017, OWCP's hearing representative affirmed the April 12, 2016 decision.

On May 2, 2017 counsel requested reconsideration and submitted an April 12, 2017 report from Dr. Neil Allen, a Board-certified internist and neurologist, who opined that appellant's claim should be accepted for strain/sprain of the lumbar spine, contusion of the lumbar spine, and aggravation of intervertebral disc disorders with radiculopathy, lumbar region. Dr. Allen reviewed appellant's medical records and noted that on December 24, 2015 she fell to the ground while attempting to lift a 50-pound box of paper and landed on her back. He explained that for her strain/sprain of the lumbar spine the mechanism of injury was a blunt force trauma that resulted in the overstretching of the ligaments and musculature of the lumbar spine beyond their normal range, in order to stabilize the spine against said force, resulting in injury. Dr. Allen further explained that the surrounding soft tissues would also become inflamed and tender, which are common indicators of a contusion. He noted that appellant's medical records indicated complaints of back and left leg pain along with muscle spasms in the low back and left hip and a CT scan of the lumbar spine also found disc protrusion at the L5-S1 with compression of the L5 nerve root. Dr. Allen concluded that when one fell onto the back, as described by appellant, the lumbar spine was positioned in flexion and this flexed position combined with the blunt force trauma sustained when she struck the floor led to excessive anterior compression of the disc and stretching of the posterior fibers, thereby resulting in symptomatic disc pathology (protrusion, bulging, and extrusion).

By decision dated July 31, 2017, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.⁷

⁶ *Supra* note 2.

⁷ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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 in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is claimed is causally related to the injury.¹⁰

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹³

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.¹⁴

ANALYSIS

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

In support of her May 2, 2017 reconsideration request, appellant submitted an April 12, 2017 report from Dr. Allen who opined that appellant's claim should be accepted for strain/sprain of the lumbar spine, contusion of the lumbar spine, and aggravation of intervertebral disc disorders with radiculopathy, lumbar region. Dr. Allen reviewed appellant's medical records and noted that on December 24, 2015 she fell to the ground while attempting to lift a 50-pound box of paper and landed on her back. He explained that for her strain/sprain of the lumbar spine the mechanism of injury was a blunt force trauma that resulted in the overstretching of the ligaments and musculature of the lumbar spine beyond their normal range, in order to stabilize the spine against said force, resulting injury. Dr. Allen further explained that the surrounding soft tissues would also become inflamed and tender, which are common indicators of a contusion. He noted that appellant's medical records indicated complaints of back and left leg pain along with muscle spasms in the

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

low back and left hip and a CT scan of the lumbar spine also found disc protrusion at the L5-S1 with compression of the L5 nerve root. Dr. Allen concluded that when one fell onto the back, as described by appellant, the lumbar spine was positioned in flexion and this flexed position combined with the blunt force trauma sustained when she struck the floor led to excessive anterior compression of the disc and stretching of the posterior fibers, thereby resulting in symptomatic disc pathology (protrusion, bulging, and extrusion).

The Board finds that, while the report from Dr. Allen is not completely rationalized, it is consistent in finding that appellant lifted a box of computer paper and fell at work on December 24, 2015 and the evidence now provides an explanation of the process by which such a fall can cause a spinal injury. This report is not contradicted by any substantial medical or factual evidence of record.¹⁵ While Dr. Allen's report is insufficient to meet appellant's burden of proof to establish a claim, it raises an inference of causal relationship between the claimed condition and factors of her federal employment.¹⁶

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁷

On remand OWCP should develop the evidence by obtaining medical records and diagnostic studies of appellant's spinal conditions. It should refer appellant, together with the case record and a statement of accepted facts, to an appropriate specialist for a second opinion examination to determine whether the accepted December 24, 2015 employment incident caused or aggravated appellant's lower back conditions.¹⁸ After such further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁶ *Id.*; see also *John J. Carlone*, *supra* note 9.

¹⁷ See *Phillip L. Barnes*, 55 ECAB 426 (2004); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002).

¹⁸ See *G.B.*, Docket No. 09-1768 (issued May 17, 2010).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2017 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: February 14, 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