

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted October 14, 2016 employment incident.

FACTUAL HISTORY

On October 14, 2016 appellant, then a 54-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a back injury lifting a parcel of mail while in the performance of duty. She stopped work on the date of injury.

Appellant was seen in a hospital emergency room on October 14, 2016 by Dr. Ito Ryosuke, a Board-certified emergency room physician, who diagnosed a lumbar and pelvis sprain and lower back muscle, fascia, and tendon strain. Dr. Ryosuke noted that appellant had a history of lumbar disc herniation and back pain, and that she had developed back pain approximately one hour before the examination when she twisted while moving a box at work.⁴

In a duty status report (Form CA-17) dated October 14, 2016, Eric Walter, a certified physician assistant, noted an injury date of October 14, 2016 and diagnosis of lumbar sprain/strain. He indicated that appellant was disabled from work.

On the date of injury, the employing establishment issued an authorization for examination and/or treatment (Form CA-16), which indicated that appellant was authorized to seek medical treatment for her October 14, 2016 employment incident. In the attending physician's report portion of the Form CA-16, Mr. Walter diagnosed lumbar sprain/strain and noted an injury date of October 14, 2016. Under history of injury, he related that appellant's back injury occurred as the result of lifting packages at work earlier that day. Mr. Walter checked a box marked "yes" indicating that the diagnosed condition had been caused or aggravated by the employment activity. He placed appellant off work from October 14 to 17, 2016.

In a report dated October 20, 2016, Dr. Myassir Zarif, a physician specializing in neurology, advised that appellant was under his care and was currently unable to work.

In a development letter dated October 27, 2016, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus limited expenses had therefore been authorized. However, a formal decision was now required. OWCP requested that she respond to an enclosed questionnaire by providing a more detailed description of the incident, witness statements she had obtained regarding the incident, the immediate effects of her employment incident, and a history of any other injury. It also requested that she submit a medical report from her attending physician including a diagnosis, history of injury, examination findings, and a rationalized opinion explaining how the reported employment incident caused or

⁴ The record reflects that appellant had prior OWCP claims also alleging back injuries, which have not been administratively combined with this claim. Appellant's February 20, 2007 claim under OWCP File No. xxxxxx827 was accepted for lumbar sprain. Her February 6, 2009 claim was also accepted for lumbar sprain under OWCP File No. xxxxxx577.

aggravated her medical condition. OWCP afforded appellant 30 days to provide the requested information.

Dr. Zarif, in a duty status report (Form CA-17) dated October 28, 2016, diagnosed lumbosacral radiculopathy with an injury date of October 14, 2016. He reported that her injury resulted from lifting a package and that she was currently off work. Dr. Zarif indicated that the history of injury given by appellant corresponded with how the injury occurred.

In a November 22, 2016 report, Dr. Zarif noted that appellant was seen for lumbar radiculopathy and low back pain and detailed examination findings. He related that she described severe daily low back pain since her October 14, 2016 employment incident. Dr. Zarif, in a disability note dated November 22, 2016, requested that appellant be excused from work until December 6, 2016.

In duty status reports (Form CA-17) dated November 22 and December 6, 2016, Dr. Zarif diagnosed lumbosacral pain and found appellant disabled from work. He noted an injury date of October 14, 2016 due to lifting a parcel and indicated that the history given corresponded to the description of how the injury occurred.

Dr. Zarif, in a December 6, 2016 report, noted that appellant was currently being seen for an aggravation of her lower back pain which occurred on October 14, 2016 due to lifting a heavy box. He observed that her pain radiated from her mid to lower spine down into her right leg and foot. Dr. Zarif requested authorization for a magnetic resonance imaging (MRI) scan to rule out nerve root or spinal cord impingement from severe disc disease.

By decision dated December 15, 2016, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted October 14, 2016 employment incident.

Subsequent to the December 15, 2016 decision, OWCP received a December 13, 2016 MRI scan which revealed advanced L3-4 posterior disc bulge, advanced L4-5 grade 1 anterolisthesis with posterior disc herniation, and worsening of L5-S1 disc bulge.

Dr. Zarif, in a December 19, 2016 report, detailed examination findings which were unchanged from prior reports and diagnosed low back pain and lumbosacral radiculopathy. In a December 19, 2016 attending physician's report (Form CA-20), he diagnosed lumbar myofascial pain. Dr. Zarif noted an injury date of October 14, 2016 and checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by employment activity, which he identified as lifting a heavy box. In December 19, 2016 and January 20, 2017 duty status reports (Form CA-17), he noted that appellant sustained a back injury while lifting a parcel of mail on October 14, 2016. Dr. Zarif diagnosed lumbosacral radiculopathy and opined that appellant was currently disabled from work.

On January 9, 2017 OWCP received appellant's December 29, 2016 request for a telephonic hearing before an OWCP hearing representative, which was held on July 10, 2017.

By decision dated August 23, 2017, OWCP's hearing representative affirmed the denial of appellant's claim, finding that the evidence of record was insufficient to establish that the diagnosed medical condition had been caused or aggravated by the accepted October 14, 2016 employment incident.

In a letter dated and received on September 27, 2017, appellant, through counsel, requested reconsideration and submitted additional medical evidence including MRI scans dated January 14, 2013 and December 13, 2016.

In a September 14, 2017 report, Dr. Zarif noted that appellant had sustained two prior work injuries involving her back. As a result of these prior work injuries and based on current examination findings, he determined that she had developed post-traumatic arthritis. Dr. Zarif explained that post-traumatic arthritis occurred when a joint has been worn out by a physical injury. Next, he observed that appellant developed extreme back pain which radiated into her right leg on October 14, 2016 after lifting a heavy package at work. Based on a comparison of 2013 and 2016 MRI scans, Dr. Zarif determined that her back condition had worsened. Based on his examination findings and review of the two MRI scans, he diagnosed L4-5 and L5-S1 disc herniation, lumbar radiculopathy, and acceleration of post-traumatic arthritis all of which he attributed to the accepted October 14, 2016 employment incident. In support of this conclusion, Dr. Zarif noted that appellant had developed post-traumatic arthritis from prior work injuries which caused a lumbar weakness. As a result of this lumbar spine weakness, he explained that lifting a heavy package on October 14, 2016 had aggravated her preexisting lumbar traumatic arthritis. In addition, Dr. Zarif explained that disc bulges occur where there is damage to lumbar region, and the bulges cause nerve irritation resulting in pain radiating down the leg.

By decision dated December 27, 2017, OWCP denied modification, finding that the evidence of record did not establish causal relationship between the diagnosed condition and the accepted October 14, 2016 employment incident.

In a letter dated and received on March 30, 2018, appellant, through counsel, requested reconsideration and submitted additional evidence.

In a March 16, 2018 report, Dr. Zarif discussed the results of the 2013 and 2016 MRI scans, which he explained showed a definite worsening of appellant's lumbar condition following the accepted October 14, 2016 employment incident. As a result of her employment injuries, he concluded that appellant developed post-traumatic arthritis. The diagnoses attributable to the accepted October 14, 2016 work incident were L4-5 and L5-S1 disc herniation, lumbar radiculopathy, and acceleration of her post-traumatic arthritis. Dr. Zarif again explained that the lumbar disc bulges occurred from damage to her lumbar region, which caused nerve irritation resulting in pain radiating down the leg. He further explained that traumatic arthritis resulted from the wearing out of a joint from a physical injury. Dr. Zarif noted that injuries to the lumbar region resulted in disc bulges and that when fluid leaked from the disc bulge, it resulted in disc herniation. He opined that the lifting of a package on October 14, 2016 was a direct cause of the diagnosed condition and unrelated to any other pathology.

By decision June 26, 2018, OWCP denied modification, finding that the evidence submitted on reconsideration contained insufficient medical rationale to establish causal relationship between the accepted October 14, 2016 employment incident and the diagnosed lumbar condition.

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,⁵ 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.⁶ 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.⁷

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

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

In support of her claim, appellant submitted medical evidence, including reports dated September 14, 2017 and March 15, 2018 from Dr. Zarif, wherein he explained that her clinical findings and imaging studies supported a traumatic injury to her lumbar spine that conformed to appellant's account of the accepted October 14, 2016 employment incident. Dr. Zarif provided a detailed medical history, noting appellant's prior accepted lumbar injuries, physical examination findings, and review of diagnostic testing. In addition, he explained that a comparison of the 2013 MRI scan taken before the work incident and one taken after the incident, on December 13, 2016, clearly demonstrated a worsening of her back condition. Dr. Zarif provided an affirmative opinion

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

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

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

on causal relationship, explaining that appellant's preexisting post-traumatic arthritis had weakened her lumbar spine and that when she lifted a heavy package on October 14, 2016, stress was placed in the lumbar region which caused fluid to flow from the disc which resulted in disc herniation. As such, Dr. Zarif accurately identified the specific employment factor which appellant claimed caused her condition, identified findings on examination, and the mechanism of injury.

The Board notes that, while none of Dr. Zarif's reports are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury due to the accepted October 14, 2016 employment incident and are not contradicted by any substantial medical or factual evidence of record.¹³ While the reports are insufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her lumbar condition and the identified employment factor and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁴

The Board thus finds that the medical evidence of record is sufficient to require further development of the case record.¹⁵ It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP 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.¹⁶ OWCP has an obligation to see that justice is done.¹⁷

The Board will remand the case for further development of the medical evidence.¹⁸ On remand it shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate specialist for an examination, and a rationalized opinion regarding causal relationship between her diagnosed lumbar spine conditions and the accepted October 14, 2016

¹³ *S.T.*, Docket No. 18-1119 (issued March 6, 2019); *S.M.*, Docket No. 13-0534 (issued June 21, 2013); *Frank B. Gilbreth*, Docket No. 02-1310 (issued May 14, 2003).

¹⁴ *D.H.*, Docket No. 18-1410 (issued March 21, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *S.S.*, Docket No. 17-0322 (issued June 26, 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).

¹⁵ *S.T.*, *supra* note 13; *C.T.*, Docket No. 16-1222 (issued March 9, 2017).

¹⁶ *D.H.*, *supra* note 14; *D.W.*, *supra* note 14; *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).

¹⁷ *D.H.*, *supra* note 14; *D.W.*, *supra* note 14; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ *C.T.*, *supra* note 15.

employment injury. After this and other such further development deemed necessary,¹⁹ OWCP shall issue a *de novo* decision.²⁰

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 15, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁹ OWCP's procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000). On remand OWCP shall administratively combine all necessary file numbers for a full and fair adjudication of appellant's pending claim.

²⁰ The Board notes that a properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. 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); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003).