

ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar conditions causally related to the accepted November 26, 2016 employment incident.

FACTUAL HISTORY

On December 6, 2016 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2016 she experienced pain in her lower back, hips, and thighs when standing in the lobby helping customers while in the performance of duty. She indicated that she helped customers pack their boxes and complete forms needed for shipping or mailing. Appellant stopped work on November 27, 2016 and has not returned.

In a December 1, 2016 report, Dr. John Mitamura, a Board-certified orthopedic surgeon, noted that appellant was injured on “November 26, 2006.”⁴ He reported that she was standing and walking while performing customer service duties in the lobby of the employing establishment, when she developed severe sharp pains in the lower back which radiated down the right hip and to the right thigh. The next day, appellant had severe back pain and was unable to place pressure on the left leg. Dr. Mitamura noted examination findings and obtained x-rays of the lumbar spine, which revealed left-sided spondylosis at the lower L4-5 level, grade 1 spondylolisthesis at L4-5 with foraminal stenosis at L5-S1, and worsening with a grade 2 spondylolisthesis at the L4-5 level. He provided an impression of spondylolisthesis at L4-5 with lumbar radiculopathy and opined that appellant was totally disabled from work. Dr. Mitamura recommended magnetic resonance imaging (MRI) scan studies of the lumbar spine, a lumbar spine brace and physical therapy. In a December 1, 2016 excuse slip, he took appellant off work due to lumbar sprain.

In a December 9, 2016 letter, the employing establishment controverted appellant’s claim. It noted that she was on limited duty with regard to her claim in OWCP File No. xxxxxx591⁵ and that her modified duties were: answering telephone -- 1 hour (sitting); lobby director -- up to 5 hours (standing intermittently, walking intermittently); and writing second notices -- 1.5 hours (sitting). The employing establishment further noted that appellant used a chair in the lobby and that she did not lift above her restrictions.

In a development letter dated December 12, 2016, OWCP requested additional factual and medical evidence in support of appellant’s November 26, 2016 claim, including a physician’s medical explanation as to how the reported employment incident caused or aggravated a medical condition. It also provided a questionnaire for appellant to complete. OWCP afforded appellant 30 days to submit the requested information.

In work excuse slips dated December 29, 2016 and January 4, 2017, Dr. Mitamura opined that appellant was totally disabled due to her lumbar sprain. In a January 4, 2017 report, he noted that appellant had injured her low back at work on November 26, 2016. Dr. Mitamura indicated that appellant’s lumbar spine MRI scan studies demonstrated retrolisthesis consistent with spinal

⁴ This appears to be a typographical error and should read as November 26, 2016.

⁵ Under OWCP File No. xxxxxx591, OWCP accepted right knee conditions due to a February 20, 2014 work-related traumatic injury. Appellant also has a claim under OWCP File No. xxxxxx444, which OWCP accepted left knee conditions for a February 8, 2007 work-related traumatic injury. These claims have not been administratively combined with the present claim.

instability and a disc herniation at the L5-S1 level. He further noted that loss of disc height and water content at L4-5 and L5-S1 were also seen. Dr. Mitamura provided an impression of lumbar disc herniation at L5-S1 with lumbar spinal instability and opined that appellant was totally disabled from work. Physical therapy and lower electromyogram/nerve conduction velocity (EMG/NCV) testing were recommended.

By decision dated January 25, 2017, OWCP denied appellant's traumatic injury claim. It found that she had not submitted rationalized medical evidence establishing causal relationship between the diagnosed back conditions and the accepted employment incident. OWCP concluded, therefore, that appellant had not established an injury or medical condition causally related to the accepted employment incident.

On February 22, 2017 appellant requested a review of the written record by an OWCP hearing representative. The envelope containing the hearing request was not of record.

In a December 5, 2016 statement, appellant discussed her work activities on November 26, 2016. She indicated that after she helped a customer pack up items for international transit, she turned to get a customs form when her back tightened up and she experienced back pain.

In a January 17, 2017 attending physician's report (Form CA-20), Dr. Mitamura indicated that appellant injured her back at work on November 26, 2016. He diagnosed lumbar disc herniation with spinal instability and indicated by checking a box marked "yes," indicating that the condition was caused or aggravated by an employment activity.

In a February 15, 2017 report, Dr. Mitamura provided an impression of lumbar spinal instability and radiculopathy with disc herniation secondary to a previous fall and a consequential injury with the date of November 26, 2016. He advised that appellant had previously fallen and struck her knees on February 20, 2014 and that this knee injury caused an antalgic gait, which created stress on her lower back and a consequential back injury to the lumbar spine. Over time appellant's low back problem progressively worsened. In progress notes dated March 16, April 18, May 16, June 20 and June 21, 2017, Dr. Mitamura continued to diagnose lumbar spinal instability with radiculopathy, noting a date of injury of November 26, 2016.

By decision dated August 11, 2017, an OWCP hearing representative affirmed OWCP's January 25, 2017 decision. She noted that the new evidence did not clearly explain how the November 26, 2016 work incident caused a new injury or what effect it had on appellant's preexisting back condition.

OWCP received progress reports dated July 27, October 3 and 31, and November 26, 2017 and January 2 and 30, February 28, March 28, April 25, and May 23, 2018 from Dr. Mitamura, which continued to note a November 25, 2016 workplace injury to the low back. Dr. Mitamura also continued to diagnose lumbar spinal instability with radiculopathy and concluded that appellant was totally disabled from work due to her work-related incident.

In an August 24, 2017 report, Dr. Mitamura provided an impression of lumbar spinal instability with disc herniation with a clear exacerbation from her standing position in the workplace lobby where she assisted customers. He indicated that MRI scan studies of the lumbar spine demonstrated a disc herniation at the L5-S1 level and EMG/NCV testing demonstrated abnormality with bilateral L5-S1 nerve root compression. Dr. Mitamura explained that when

appellant stood in the lobby for eight hours at her workplace, the prolonged standing created additional downward pressure of the upper torso on the L5-S1 level which had a disc herniation. This exacerbated the disc herniation and created damage to the nerves. Dr. Mitamura opined that a clear exacerbation of the nerve root compression from the disc herniation occurred from the forces of the standing position which created downward pressure across the L5-S1 disc space and an outward migration and disc herniation in the L5-S1 level.

On July 30, 2018 appellant, through counsel, requested reconsideration. Counsel argued that Dr. Mitamura's June 19, 2018 report supported causal relationship between appellant's described injuries and conditions and the November 26, 2016 employment incident.

In a June 19, 2018 report, Dr. Mitamura summarized appellant's visits along with his findings and opinions on those dates along with the results of the diagnostic studies. He again related that appellant sustained an injury to her lower back from a work-related accident on November 26, 2016, while she was standing and walking performing customer service duties in the lobby of the employing establishment. Dr. Mitamura diagnosed lumbar radiculopathy and instability with spondylolisthesis at L4-5 with sprain of the ligaments of the lumbar spine. He opined that, due to the employment incident, appellant had significant facet arthropathy, spinal stenosis and spondylolisthesis with spinal instability. Dr. Mitamura indicated that additional studies were needed and, due to the severity of injuries to the lumbar spine, appellant would ultimately need lumbar spine surgery.

Additional progress reports from Dr. Mitamura dated August 2 and September 12, 2018 continued to diagnose lumbar spinal instability with radiculopathy.

By decision dated October 26, 2018, OWCP denied modification of its August 11, 2017 decision.

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 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.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

In order 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the

⁶ See *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ 20 C.F.R. § 10.115(e); see *T.O.*, Docket No. 18-1012 (issued October 29, 2018); see *Michael E. Smith*, 50 ECAB 313 (1999).

employment incident which is alleged to have occurred.⁸ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰

ANALYSIS

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

In support of her claim, appellant submitted medical reports dating from December 1, 2016 from Dr. Mitamura. Dr. Mitamura reported that appellant was standing and walking while performing customer service in the lobby of the employing establishment on November 26, 2016 when she developed severe sharp pains in the lower back which radiated down the right hip and to the right thigh.

Dr. Mitamura provided details pertaining to causal relationship of appellant's lumbar spinal instability and radiculopathy with disc herniation to the standing involved in appellant's modified-duty position. He explained, in a February 15, 2017 report, that appellant's February 20, 2014 work-related knee injury caused an antalgic gait, which created stress on her lower back and a consequential back injury to the lumbar spine, which caused progressive pain and a lumbar disc herniation. Dr. Mitamura noted that over time appellant's low back problem progressively worsened and she indicated November 26, 2016 as the date of subsequent injury. In his August 24, 2017 report, he indicated that appellant's standing position in the workplace lobby exacerbated her lumbar spinal instability with disc herniation. Dr. Mitamura noted objective evidence of a disc herniation at the L5-S1 level and bilateral L5-S1 nerve root compression. He explained that prolonged standing created additional downward pressure of the upper torso on the L5-S1 level which had a disc herniation, which exacerbated the disc herniation and damage to the nerves. Dr. Mitamura also explained that an exacerbation of the nerve root compression from the disc herniation occurred from the forces of the standing position creating downward pressure across the L5-S1 disc space and an outward migration of the disc herniation in the L5-S1 level. In his June 19, 2018 report, he incorporated all of his previous reports and opined that, due to the employment events of November 26, 2016, appellant had significant facet arthropathy, spinal stenosis and spondylolisthesis with spinal instability.

⁸ See *P.F.*, Docket No. 18-0973 (issued January 22, 2019); see also *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *C.P.*, Docket No. 18-1645 (issued March 8, 2019).

¹⁰ *C.B.*, Docket No. 18-0071 (issued May 13, 2019).

The Board finds that, while Dr. Mitamura's reports are not completely rationalized and are insufficient to meet appellant's burden of proof to establish her claim, they are consistent in indicating that she sustained a back injury on November 26, 2018 while assisting a customer in a standing position and raise an uncontroverted inference between her diagnosed back conditions and the work-related incident and are sufficient to require OWCP to further develop the medical evidence and the case record.¹¹

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.¹²

The Board will therefore remand the case for further development of the medical evidence. 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 diagnosed lumbar conditions are causally related to the accepted November 26, 2016 employment incident, either directly or through aggravation, precipitation, or acceleration.¹³ Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's November 26, 2016 traumatic injury claim.

CONCLUSION

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

¹¹ See *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); see *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

¹² See *X.V.*, *id.*; *S.W.*, Docket No. 18-0119 (issued October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

¹³ *Id.*; *P.A.*, Docket No. 09-0319 (issued November 23, 2009).

ORDER

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

Issued: July 18, 2019
Washington, DC

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

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

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