

ISSUE

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include L5-S1 retrolisthesis and herniated disc, causally related to her January 18, 2013 employment injury.

FACTUAL HISTORY

On January 19, 2013 appellant, then a 39-year-old transitional city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2013 she strained her lower back when her postal vehicle was rear-ended while in the performance of duty. She stopped work. OWCP accepted appellant's claim for sprains of the cervical, lumbar, and thoracic spine, right elbow and forearm, and right shoulder and upper arm. It paid appellant wage-loss compensation on the periodic rolls, effective May 5, 2013.

OWCP received several diagnostic examination reports of appellant's lumbar spine. A January 18, 2013 lumbar spine magnetic resonance imaging (MRI) scan report noted a normal lumbosacral spine. An April 23, 2013 lumbar spine MRI scan report showed minimal lower lumbar spondylosis at L4-5 and L5-S1.

Appellant received medical treatment from Dr. Paul C. Hanahan, who specializes in occupational and family medicine. In a May 20, 2013 note, Dr. Hanahan noted that an April 23, 2013 lumbar spine MRI scan showed additional diagnoses of L5-S1 retrolisthesis and disc herniation. He related that on January 18, 2013 appellant was driving her postal truck and was hit from behind by another vehicle. Dr. Hanahan explained that appellant sustained a "whiplash-type injury to the spine." He opined that the additional diagnosis of L5-S1 retrolisthesis and disc herniation were directly and causally related to the January 18, 2013 employment injury. In progress notes beginning May 21, 2013, Dr. Hanahan continued to treat appellant for cervical, thoracic, and lumbar spine strains secondary to whiplash injury and for lumbar disc bulge with left leg radiculopathy.

In a June 14, 2013 report, Dr. Jason Eubanks, a Board-certified orthopedic surgeon, described the January 18, 2013 employment injury and related appellant's complaints of continued back pain radiating into her left hip and buttocks and left lower extremity numbness and tingling. Upon physical examination, he observed no pain with range of motion of her bilateral hips. Straight leg raise testing showed discomfort in the back left side and negative on the right side. Dr. Eubanks discussed appellant's diagnostic testing. He reported that appellant did not have any evidence of disc herniations on the MRI scans which would require surgical intervention.

On October 9, 2013 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the case record, to Dr. Robert Leb, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant continued to have residuals and remained disabled due to her accepted January 18, 2013 employment injury and whether the acceptance of her claim should be expanded to include additional conditions. In a November 12, 2013 report, Dr. Leb discussed the history of appellant's January 18, 2013 employment injury and noted her accepted conditions of thoracic, lumbar, and cervical sprain and right shoulder and elbow sprains. He related that an April 23, 2013 lumbar spine MRI scan showed minimal lumbar spondylosis at L4-5 and L5-S1 and a small disc herniation at the L5-S1. Dr. Leb provided examination findings of appellant's right shoulder, right elbow, cervical spine, thoracic spine, and

lumbar spine. He diagnosed retrolisthesis at L5-S1 and a disc herniation not impinging on the thecal sac or nerve root. Dr. Leb opined that this condition was likely directly and proximately related to the work injury that she sustained on January 18, 2013.

In a July 24, 2014 supplemental report, Dr. Leb reviewed appellant's history and provided examination findings. He reported that appellant's right shoulder and right elbow sprains had resolved, but that appellant continued to have minimal symptoms related to her cervical, thoracic, and lumbar sprains. Dr. Leb indicated that appellant could work part time with restrictions.

Appellant underwent another lumbar spine MRI scan on February 5, 2015, which showed degenerative disc disease and spondylosis at L4-5 and L5-S1 with no discrete focal disc herniation, central canal stenosis or significant neural foramina narrowing seen throughout the lumbar spine.

In a February 12, 2015 progress note, Dr. Todd B. Francis, a Board-certified family practitioner, reported that there was no clear reason as to why appellant was having her current symptoms. He related that there was no MRI scan evidence of disc herniation or lumbosacral pathology. In a March 18, 2015 note, Dr. Leonard Weinberger, a Board-certified neurologist, reviewed appellant's history, provided examination findings, and diagnosed cervical, thoracic, and lumbar sprains.

In September 2015, OWCP initiated another second opinion referral to Dr. Richard Deerhake, a Board-certified orthopedic surgeon, for an opinion on whether appellant continued to suffer residuals or disability from work due to her January 18, 2013 employment injury. In an October 14, 2015 report, Dr. Deerhake noted the history of injury, his review of the medical records and SOAF, and presented examination findings. He diagnosed lumbar and neck sprains. Dr. Deerhake reported that there were no positive, objective findings of thoracic, right elbow, or right forearm sprains.

In letters dated November 4 and December 12, 2015, Dr. Hanahan indicated that he reviewed Dr. Deerhake's October 14, 2015 report. He asserted that Dr. Deerhake did not emphasize appellant's severe pain of the lower back with radiation down the left leg and symptoms consistent with lumbosacral neuritis and neurogenic bladder. Dr. Hanahan related that the accepted conditions of cervical and lumbar sprains should have resolved within three months of occurrence. He indicated that the fact that appellant's neck and lower back pain, as well as bowel and bladder incontinence and perianal numbness, still existed eliminated the diagnosis of sprain and required an additional diagnosis. Dr. Hanahan opined that the "work[-]related injury appellant incurred on [January 18, 2013] is directly and causally related to her current symptoms of neck and low back pain with bowel and bladder incontinence and perianal numbness."

By letter dated November 20, 2015, counsel requested that the acceptance of appellant's claim be expanded to include L5-S1 retrolisthesis and disc herniation as causally related to the January 18, 2013 employment injury. He included a copy of Dr. Leb's November 12, 2013 second opinion report.

OWCP advised appellant in a December 3, 2015 letter that the evidence submitted was insufficient to establish that she sustained additional conditions causally related to the January 18, 2013 employment injury. It requested that she submit additional medical evidence to establish additional diagnosed conditions causally related to the January 18, 2013 employment injury. By separate letter dated December 3, 2015, OWCP also requested that Dr. Deerhake provide a

supplemental report regarding whether appellant sustained L5-S1 retrolisthesis and disc herniation as a result of the January 18, 2013 employment injury.

In a December 15, 2015 supplemental report, Dr. Deerhake described the January 18, 2013 employment injury and noted that lumbar x-rays were taken on the date of accident and interpreted as normal. He noted that diagnostic testing did not show lumbar spondylosis at L4-S1 and disc herniation until April 23, 2013. Dr. Deerhake reiterated his examination findings from his October 14, 2015 evaluation. He opined that, based on the diagnostic tests and history of injury, there was no medical evidence to support a causal relationship between the diagnoses of L5-S1 retrolisthesis and disc herniation and the January 8, 2013 employment injury.

In a January 25, 2016 report, Dr. Hanahan noted his disagreement with Dr. Deerhake's December 15, 2015 opinion. He related that review of his clinical progress notes demonstrated that appellant's upper back symptoms improved over time, but her lower back symptoms worsened. Dr. Hanahan explained that the symptoms that evolved from the time of injury were consistent with a spinal cord injury. He concluded that the MRI scan findings of L5-S1 retrolisthesis and disc herniation needed to be added to her claim.

By decision dated March 24, 2016, OWCP denied expansion of the acceptance of appellant's claim to include L5-S1 retrolisthesis and disc herniation. It found that the medical evidence of record was insufficient to establish that the additional diagnoses were causally related to the January 18, 2013 employment injury.

On March 31, 2016 counsel requested a telephonic hearing before an OWCP hearing representative.

In a letter dated June 9, 2016, OWCP advised appellant that a conflict in medical opinion existed between Dr. Deerhake, OWCP's second opinion examiner, and Dr. Hanahan, appellant's treating physician, regarding whether her L5-S1 retrolisthesis and disc herniation of the lumbar spine was causally related to the January 18, 2013 employment injury. It referred her, along with the case record, a list of questions, and a SOAF, to Dr. Raymond L. Candage Jr., a Board-certified orthopedic surgeon, for an impartial medical examination.

On October 24, 2016 a telephonic hearing was held. The hearing representative indicated that appellant underwent an impartial medical examination with Dr. Candage, but his report was not yet available.

By decision dated December 12, 2016, an OWCP hearing representative determined that an unresolved conflict in medical opinion still existed. He remanded the claim to OWCP for referral to an impartial medical examiner in order to resolve the conflict.

OWCP subsequently received a September 22, 2016 supplemental report from impartial medical examiner Dr. Candage. Dr. Candage described a history of the January 18, 2013 employment injury, reviewed the medical reports, and noted appellant's continued complaints. Upon physical examination of appellant's lumbar spine, he observed tenderness above the left buttock, moderate straightening of the lumbar lordosis, and limited forward bending. Straight leg raise and Faber tests were positive bilaterally. Dr. Candage related that x-rays of the lumbar spine taken that date were unremarkable. He reported diagnoses of cervical and lumbar spine sprains and noted that appellant's thoracic and right upper extremity symptomatology had resolved. Dr. Candage concluded that appellant's L5-S1 retrolisthesis and disc herniation were not related

to the January 18, 2013 employment injury. He explained that his medical reasoning was the same as Dr. Deerhake's. Dr. Candage noted that appellant had reached maximum medical improvement.

In a January 24, 2017 decision, OWCP denied appellant's request to expand the acceptance of her claim to include L5-S1 retrolisthesis and disc herniation of the lumbar spine. It found that the special weight of medical evidence rested with the opinion of Dr. Candage, OWCP's impartial medical examiner, who opined in a September 22, 2016 report that the L5-S1 retrolisthesis and disc herniation of the lumbar spine was not causally related to the January 18, 2013 employment injury.

On January 31, 2017 counsel requested a telephonic hearing before an OWCP hearing representative. A hearing was held on July 7, 2017.

In response to OWCP's January 24, 2017 request for clarification, Dr. Candage submitted a February 7, 2017 supplemental report noting that appellant could work four hours per day and indicated that her work restrictions were permanent.

By decision dated August 31, 2017, an OWCP hearing representative affirmed the January 24, 2017 decision based on the September 22, 2016 report of Dr. Candage, the impartial medical examiner. The hearing representative found that the medical evidence was insufficient to establish that appellant has L5-S1 retrolisthesis or disc herniation causally related to the January 18, 2013 employment injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁷ 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).⁸

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and

⁵ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Id.*

⁹ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

rationale.¹⁰ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include L5-S1 retrolisthesis and herniated disc.

OWCP determined that a conflict in the medical opinion evidence was created between Dr. Hanahan, appellant's treating physician, who opined that appellant's diagnosed L5-S1 retrolisthesis and disc herniation should be included in her claim, and Dr. Deerhake, OWCP's referral physician, who concluded that there was no medical evidence to support a causal relationship between the January 8, 2013 employment injury and an additional lumbar spine condition. It referred appellant to Dr. Candage for an impartial medical examination in order to resolve the conflict in medical evidence, pursuant to 5 U.S.C. § 8123(a).

In a September 22, 2016 report, Dr. Candage noted his review of the SOAF and the medical record. He related appellant's continued complaints of low back pain radiating to her bilateral lower extremities. Upon examination of appellant's lumbar spine, Dr. Candage observed tenderness above the left buttock, moderate straightening of the lumbar lordosis, and limited forward bending. Straight leg raise and Faber tests were positive bilaterally. Dr. Candage noted that a lumbar spine x-ray examination taken that day was unremarkable. He diagnosed cervical and lumbar sprains. Dr. Candage concluded that he agreed with Dr. Deerhake's opinion and reasoning that appellant's diagnosed L5-S1 retrolisthesis and disc herniation were not causally related to the January 18, 2013 employment injury. He related that Dr. Deerhake noted that a lumbar x-ray examination performed on appellant on the date of the accident was normal and that appellant's subjective complaints and physical examination findings were not indicative of L5-S1 retrolisthesis and disc herniation.

The Board finds that Dr. Candage's opinion is entitled to the special weight of the medical opinion evidence and establishes that appellant's L5-S1 retrolisthesis and disc herniation of the lumbar spine was not causally related to the January 18, 2013 employment injury. Dr. Candage accurately described the employment injury and noted his review of the medical record, including the SOAF. He performed a thorough, clinical examination and provided findings on examination. Dr. Candage noted that a lumbar spine x-ray examination was normal. He indicated that he agreed with Dr. Deerhake's opinion and reasoning that appellant's diagnosed L5-S1 retrolisthesis and disc herniation was not causally related to the January 18, 2013 employment injury. The Board concludes that Dr. Candage's opinion is entitled to the special weight accorded an impartial medical examiner with regard to the issue of whether the acceptance of appellant's claim should be expanded to include L5-S1 retrolisthesis and/or herniated disc.¹² As such, appellant has not met her burden of proof to expand the accepted conditions of her claim.

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹¹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹² *See M.M.*, Docket No. 16-1655 (issued April 4, 2018); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

On appeal counsel alleges that the referee report was not rationalized and that OWCP erred in according it determinative weight. As explained above, the Board finds that Dr. Candage provided a well-rationalized opinion based on a complete factual background, SOAF, a review of the medical record, and physical examination findings that supported that appellant's L5-S1 retrolisthesis and disc herniation were not causally related to the January 18, 2013 employment injury. Accordingly, Dr. Candage's medical opinion is sufficient to carry the special weight of medical evidence and he resolved the conflict.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional diagnosed conditions of L5-S1 retrolisthesis and herniated disc.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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