



## **FACTUAL HISTORY**

On June 21, 2019 appellant, then a 58-year-old human resources clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition due to factors of her federal employment including repetitious reaching, twisting, bending, kneeling, and going up and down a ladder. She indicated that she first became aware of her condition on February 1, 2019 and realized that it was related to factors of her federal employment on March 18, 2019. Appellant did not stop work.

In a July 1, 2019 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 14, 2019 report, Dr. Sumant Patel, Board-certified in diagnostic radiology, provided diagnostic findings from an x-ray of the sacroiliac joints. He indicated that appellant had sacroiliac (SI) joint pain for the prior three weeks and diagnosed a sacroiliac ligament sprain.

Appellant noted in a June 18, 2019 statement that her job required her to file medical records in multiple areas in a very tight space, constantly reaching, bending, twisting, kneeling, pushing and pulling, and going up and down a ladder. She asserted that she never had a back problem until she started working as a file clerk. Appellant indicated that on that day she was pulling a file out of a tight area when she experienced a sharp pain across her lower back, and she could hardly get up and walk. She indicated that her doctor diagnosed a back sprain and recommended over-the-counter medication, but they did little to ease the pain. Appellant asserted that the daily activities of filing and bending down to locate and retrieve files had taken a toll on her back.

In a June 19, 2019 medical report, Lan Nguyen, a certified physician assistant, examined appellant for a complaint of back pain. She diagnosed low back pain and a lower back muscle strain. In a work status report of even date, Ms. Nguyen noted that appellant could return to work without restrictions on June 21, 2019.

In a July 15, 2019 statement, appellant noted that on March 14, 2019, her primary care physician ordered an x-ray because of her complaints of back pain. She indicated that on June 18, 2019 her acting manager suggested that her pain seemed to have resulted from an occupational, not traumatic, injury.

In a July 23, 2019 letter, the employing establishment controverted appellant's claim indicating that she had not identified an accident that caused her pain and that she had not missed work.

By decision dated August 26, 2019, OWCP accepted that the employment factors occurred, as alleged, but denied the claim, finding that no medical evidence had been submitted to establish a medical diagnosis in connection with the accepted employment factors. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an August 2, 2019 report of hazard and unsafe condition, an employing establishment human resources specialist noted that appellant's injury exposed a potential safety hazard at the employing establishment. She indicated that the files were tightly stacked with little to no room for additional files. The human resources specialist asserted that this safety hazard created the potential for possible strains/sprains to hand, wrist, arm/elbow, shoulder, neck, and back and proposed a mitigating solution.

In an August 30, 2019 report, Dr. Marcos Masson, a Board-certified orthopedic surgeon, noted that appellant twisted her back while picking up a file in the lower shelf, causing sudden sharp pain. He indicated that she was administered an injection at an emergency room and was still working full time. Dr. Masson further noted that appellant had no previous extremity problems, but currently had moderate pain in her lower back when she performed certain motions or activities. His physical examination, revealed normal results aside from left lumbosacral (LS) paraspinal tenderness, and diagnosed bilateral sprain of joints and ligament of unspecified parts of neck. Dr. Masson recommended formal physical therapy and light-duty work restrictions. In an activity restriction note of even date, he provided work restrictions and diagnosed lumbosacral (LS) sprain. In a physical therapy prescription of even date, Dr. Masson prescribed physical therapy for appellant's sprain.

On September 26, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 10, 2019, the hearing representative denied appellant's request for a review of the written record as untimely filed, finding that her request was not made within 30 days of the August 26, 2019 OWCP decision as it was received unsigned and undated on September 26, 2019. The hearing representative further indicated that it exercised its discretion, but determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,<sup>3</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

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<sup>2</sup> *Id.*

<sup>3</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>4</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>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete and accurate 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.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision as to whether her diagnosed condition is causally related to the accepted factors of her employment.

Dr. Patel, in his March 14, 2019 x-ray report, diagnosed a sacroiliac ligament sprain. Additionally, Dr. Masson, in his reports dated August 30, 2019, diagnosed bilateral sprain of joints and ligament of unspecified parts of the neck and lumbosacral sprain, noting that on physical examination, appellant presented with left lumbosacral paraspinal tenderness. Therefore, the Board finds that the evidence of record establishes diagnosed medical conditions.

OWCP has not reviewed the medical evidence of record regarding the issue of whether the established diagnoses are causally related to the accepted employment factors. Therefore, the case will be remanded to OWCP for consideration of the medical evidence on the issue of causal

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<sup>4</sup> *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition. The Board also finds, however, that the case is not in posture for a decision as to whether her diagnosed medical condition is causally related to the accepted factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 10 and August 26, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 1, 2020  
Washington, DC

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

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

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

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<sup>10</sup> In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.