

FACTUAL HISTORY

On December 29, 2016 appellant, then a 61-year-old respiratory therapist, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2016 she injured her lower back and left rib as a result of a collision between her scooter and another scooter. The claim form did not indicate a date of work stoppage.

A November 15, 2016 employing establishment report of emergency treatment, completed by a physician assistant, included diagnoses of acute on chronic low back pain and left rib contusion.

In a duty status report (Form CA-17) dated December 29, 2016, Dr. Syed H. Shah, Board-certified in internal medicine, indicated that appellant was not able to work at that time due to worsening low back pain and a left rib contusion. He diagnosed acute on chronic low back pain. In an attached attending physician's report (Form CA-20) of even date, he wrote that she had been injured by a scooter at work. Dr. Shah diagnosed a musculoskeletal injury due to chronic back pain, worsening sciatica, and a left rib contusion. He advised that, beginning November 19, 2016, appellant had been totally disabled from work, and that she would be able to return after physical therapy and epidural injections. On January 30, 2017 Dr. Shah noted that she continued to be under treatment and could not return to work.

On February 9, 2017 appellant filed wage loss compensation claims (Form CA-7) for total disability from work for the period December 26, 2016 to February 4, 2017.

In a letter dated February 9, 2017, Dr. Shah noted that he had seen appellant that day for back and leg pain, and advised that she would not be released to work until he evaluated her again on March 9, 2017.

On March 27, 2017 OWCP accepted contusion of left front wall of thorax, (left rib contusion).

By decision dated March 28, 2017, OWCP denied appellant's entitlement to continuation of pay for the period November 19 through December 24, 2016. It found that she had not reported her injury on a form approved by OWCP within 30 days following the injury.

In a development letter dated March 28, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim for wage-loss compensation on December 27, 2016 and continuing. It noted that the evidence of record indicated that she stopped work on November 19, 2016 and had not returned, and that Dr. Shah advised that she was off work due to back and leg pain, which were invalid diagnoses that had not been accepted in her claim. OWCP informed appellant of the type of evidence needed to establish her disability claim, including a reasoned medical opinion regarding why additional conditions should be accepted. It afforded her 30 days to submit the necessary evidence.

Dr. Shah continued to submit reports in which he advised that appellant could not return to work. On March 9, 2017 he administered an epidural injection to her back. In a March 23, 2017 report, Dr. Shah noted that, since appellant was still in pain, she should finish physical therapy and follow-up with orthopedic surgery before she could return to work. In a second March 23, 2017

report, he advised that appellant had a prior back injury that was aggravated by the November 10, 2016 incident when she was hit by a scooter. Dr. Shah described lumbar magnetic resonance imaging (MRI) scan findings of multilevel degenerative disc and facet changes with mild-to-moderate canal stenosis at L3-4 and varying degrees of mild-to-moderate foraminal stenosis at multiple levels. He diagnosed acute on chronic low back pain and contusion of the leg and rib and advised that the employment incident aggravated appellant's back pain by direct trauma and stretching of the leg and lower back. Dr. Shah also completed a Form CA-17 report and a Form CA-20 report that day in which he advised that she could not work due to leg pain, weakness, and low back pain. He indicated that the scooter injury aggravated a prior back injury.

Appellant submitted responses to the development questionnaire on March 31, 2017. She described the how the November 10, 2016 injury had occurred and noted that it caused low back and pelvic pain that radiated down her right leg.

On August 17 and 18, 2017 appellant filed additional Form CA-7 claims for wage-loss compensation for total disability from work for the period February 6 to June 23, 2017.²

Appellant also submitted a July 20, 2017 Form CA-17 report in which Dr. Shah advised that she could return to modified part-time work.

Appellant also submitted the first page of treatment notes from Dr. Shah, including a March 9, 2017 report, in which he noted that appellant had received a lumbar injection on March 7, 2017 and had attended physical therapy, but continued to have acute on chronic back pain. His examination that day and on March 23, 2017 showed some paraspinal muscle tenderness and a positive straight leg raise. A follow-up report dated April 27, 2017 noted only some paraspinal muscle tenderness and continued acute on chronic back pain. On May 25, 2017 Dr. Shah reported some paraspinal muscle tenderness and a negative straight leg raise.

In a development letter dated August 23, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim for wage-loss compensation. It informed her of the type of evidence needed to establish her claim and afforded her 30 days to submit the requested information.

In a letter dated September 21, 2017, Dr. Shah noted that he had treated appellant from November 29, 2016 through September 7, 2017 for an injury that occurred on November 10, 2016. He reported that she had a prior back injury that was aggravated by the incident of November 10, 2016 when she was struck by a scooter and that this incident also aggravated her diagnosed multi-level lumbar degenerative disc disease and multi-level spinal stenosis, by direct trauma and by stretching her leg and lower back. Dr. Shah opined that appellant's physical examination on all visits was consistent with low back pain and radiation.

By decision dated February 7, 2018, OWCP denied appellant's claim for wage-loss compensation for the period December 26, 2016 to June 23, 2017. It found that the medical

² On one claim form, a supervisor noted that appellant had returned to work on June 27, 2017 and on another, a supervisor noted that appellant had returned to work on June 25, 2017 with the same number of hours and the same duties.

evidence of record was insufficient to establish causal relationship between the November 10, 2016 injury and the claimed disability.

LEGAL PRECEDENT -- ISSUE 1

When 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.³

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁴ 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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

In a case in which 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.⁷

ANALYSIS -- ISSUE 1

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

In support of her request to expand the acceptance of her claim to include a lumbar condition, appellant submitted a series of reports from Dr. Shah who treated appellant from December 29, 2016 through at least September 7, 2017. Dr. Shah reported a correct history of injury and has been consistent in his diagnoses of a musculoskeletal injury due to chronic back pain and a left rib contusion and that appellant was totally disabled from work commencing November 19, 2016. On March 23, 2017 Dr. Shah reiterated his diagnoses. He noted February 2, 2017 MRI scan findings of multilevel degenerative disc and facet changes in the lumbar spine with mild-to-moderate canal stenosis at L3-4 and varying degrees of mild-to-moderate foraminal stenosis at multiple levels. Dr. Shah opined that the November 2016 injury aggravated appellant's

³ S.S., Docket No. 19-1803 (issued April 1, 2020); *see T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ G.V., Docket No. 20-0055 (issued April 21, 2020); *John D. Jackson*, 55 ECAB 465 (2004).

⁵ *See K.T.*, Docket No. 19-1718 (issued April 7, 2020); *P.M.*, Docket No. 18-0287 (issued October 11, 2018); *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁶ R.K., Docket No. 20-0049 (issued April 10, 2020); *James Mack*, 43 ECAB 321 (1991).

⁷ Y.S., Docket No. 19-1572 (issued March 12, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

prior back condition, indicating that by direct trauma, it stretched her leg and lower back and specifically indicated that that the November 2016 injury aggravated her diagnosed multi-level degenerative disc disease and multi-level spinal stenosis of the lumbar spine.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁸ OWCP has an obligation to see that justice is done.⁹ The Board finds that, although Dr. Shah's opinion was insufficiently rationalized to meet appellant's burden of proof to establish expansion of her claim to include a lumbar condition or any disability due to the November 10, 2016 employment injury, it is sufficient to require further development of the case by OWCP.¹⁰ Thus, the Board will remand the case to OWCP for further development of the medical evidence to obtain a rationalized medical opinion as to whether the accepted November 10, 2016 employment incident caused or aggravated a lumbar spine condition and whether this caused her claimed period of disability. On remand OWCP should prepare a statement of accepted facts, which includes the accepted condition of the case. It should then obtain a second opinion examination as to whether the November 10, 2016 injury caused or aggravated her preexisting lumbar condition, and if she had any disability due to the November 10, 2016 employment injury.¹¹ After such further development as may be deemed necessary, OWCP shall issue a *de novo* decision regarding whether appellant's claim should be expanded to include a lumbar condition and as to whether she is entitled to the disability compensation claimed.

CONCLUSION

The Board finds that this case is not in posture for a decision.¹²

⁸ *T.L.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *Id.*

¹⁰ See *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ *Id.*

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: June 2, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board