



## ISSUE

The issue is whether appellant has met her burden of proof to establish a spinal condition causally related to the accepted March 30, 2018 employment incident.

## FACTUAL HISTORY

On April 9, 2018 appellant, then a 28-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2018 she injured her back when she bent down to drop off a package while in the performance of duty. In an undated narrative statement accompanying her claim, she advised that she had rods placed in her back in October 2013 due to nonemployment-related scoliosis. Appellant explained that, when she set down three packages while delivering mail on March 30, 2018, she heard a loud popping and snapping sound and felt movement in her back. She told her supervisor that something was wrong with her back and made an appointment to see a physician.

In an April 9, 2018 statement, the employing establishment asserted that appellant's claim should be accepted as an aggravation. It noted that she had rods in her back due to scoliosis unrelated to her employment, but had "aggravated her conditions by lifting a package."

In a development letter dated April 11, 2018, OWCP informed appellant of the deficiencies of her claim, noting that she had not submitted medical evidence containing a diagnosis of a medical condition. It afforded her 30 days to submit the requested medical evidence, including medical records related to her back surgery in October 2013 and a reasoned opinion addressing how the identified employment incident caused or aggravated a diagnosed condition.

Subsequently, OWCP received a report dated March 30, 2018 from Dr. Christopher Good, a Board-certified orthopedic surgeon, who examined appellant for complaints of lower back pain. Dr. Good noted that she had undergone scoliosis thoracolumbar fusion surgery four and a half years earlier. He obtained a history of appellant experiencing a sudden "pop" in her back and sharp pain on that date after bending over to deliver a package. Reviewing x-rays, Dr. Good noted a break in her rod at the L3 level on the left. On physical examination, he found tenderness to palpation over the left L3-4, L4-5, and L5-S1 facet joints with spasm over the left lumbar paraspinal muscles. Dr. Good diagnosed painful orthopedic hardware, a failed orthopedic implant, and to evaluate for pseudoarthritis or arthrodesis after fusion. He attributed the break in appellant's rod at L3 on the left "to [appellant's] injury while at work." Dr. Good opined that she should remain off work pending further evaluation and ordered a computerized tomography (CT) scan.

On April 4, 2018 Dr. Good reviewed appellant's history of an injury while at work one week earlier bending over to deliver a package. He noted that she had a broken rod at the L3 level on the left below her L3 pedicle screw head. CT scans revealed a stable bony fusion of the lumbar spine. Dr. Good diagnosed thoracic and lumbar scoliosis, painful orthopedic hardware, and a failed orthopedic implant. He recommended that appellant stay off work for the next one to two weeks until he could review her whole body scan.

In a progress report dated April 18, 2018, Dr. Good evaluated appellant for low back pain on the left side of the spine and discussed her history of a March 30, 2018 injury at work while delivering mail. On physical examination, he found significant tenderness to palpation over the left sacroiliac joint and right lumbar paraspinal muscles. Dr. Good diagnosed thoracic and lumbar

scoliosis, sacroiliitis, and a failed orthopedic implant. He assessed painful orthopedic hardware. Dr. Good reviewed a CT scan, noting that he was concerned about pseudoarthrosis at L3-4 due to appellant's pain, broken rod, and increased uptake on a bone scan. He recommended that she stay off work for two weeks until their follow-up visit for reevaluation. In a duty status report (Form CA-17) of even date, Dr. Good found that appellant was disabled from employment. He checked a box marked "yes" indicating that the history of injury given corresponded to that on the form of her breaking a rod in her back bending down to deliver a package.

On May 4, 2018 Dr. Good followed up with appellant for complaints of left buttock pain and provided a history of the March 30, 2018 employment incident. He indicated that her CT scan had confirmed a broken rod on the left at the L3 level and noted that she had failed to make significant progress with rest. On physical examination, Dr. Good found mild tenderness to palpation at the right sacroiliac joint and significant tenderness to palpation at the left sacroiliac joint and instrumentation. He noted that appellant ambulated with a slight antalgic gait on the left. Dr. Good diagnosed failed orthopedic implant, painful orthopedic hardware, and sacroiliitis. He recommended an injection to "calm down" appellant's symptoms.

By decision dated May 23, 2018, OWCP denied appellant's traumatic injury claim finding that she had not established a causal relationship between the accepted March 30, 2018 employment incident and her diagnosed spinal conditions. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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 of FECA,<sup>5</sup> 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.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>8</sup> Fact of injury consists of two components that must be considered in conjunction with one another. The first

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>7</sup> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>9</sup> The second component is whether the employment incident caused a personal injury.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 incident.<sup>11</sup>

### ANALYSIS

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

The Board notes initially that the employing establishment has not contested this claim. In a letter dated April 9, 2018 the employing establishment supported that the claim should be accepted for an aggravation. The employing establishment noted that appellant had rods placed in her back due to scoliosis which was not work related, however, she aggravated her condition by lifting a package.

In a report dated March 30, 2018, Dr. Good noted that appellant had undergone scoliosis thoracolumbar fusion surgery four and a half years earlier. He advised that on March 30, 2018 she had bent down to deliver a package and had felt a sudden “pop” in her back, followed by immediate sharp pain. Reviewing x-rays, Dr. Good noted a break in her rod at the L3 level on the left. He diagnosed a failed orthopedic implant and pseudoarthritis after fusion. Dr. Good opined that the break in appellant’s L3 rod resulted from her injury at work and found that she was currently disabled from work. The Board finds that this March 30, 2018 report is sufficient to require further development of the medical evidence to see that justice is done.<sup>12</sup> Dr. Good provided explanation as to how the mechanism of the accepted employment incident was sufficient to cause the diagnosed conditions.<sup>13</sup> Following review of Dr. Good’s March 30, 2018 report, as well as his subsequent reports, it is found that his medical opinion is well rationalized and logical and is, therefore, sufficient to require further development of appellant’s claim.

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.<sup>14</sup> It has an obligation to see that justice is done.<sup>15</sup>

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<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *Id.*; see also *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> See *S.S.*, *supra* note 8; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>12</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein).

<sup>14</sup> See *C.C.*, Docket No. 18-1453 (issued January 28, 2020); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>15</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); see *B.C.*, Docket No. 15-1853 (issued January 19, 2016).

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether her diagnosed medical conditions are causally related to the accepted employment factors. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Issued: June 4, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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