

ISSUE

The issue is whether appellant has met her burden of proof to establish diagnosed medical conditions causally related to the accepted January 6, 2015 employment incident.

FACTUAL HISTORY

On January 21, 2015 appellant, then a 52-year-old Army substance abuse program prevention coordinator, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2015 she injured her neck, back, ribs, and hip when she slipped on oil near a copier while in the performance of duty. She did not fall. The alleged incident was reported to an employing establishment supervisor on January 8, 2015. R.G., a coworker, provided an undated witness statement noting that he saw appellant slip, but not fall and that she cleaned up oil on the floor. Appellant stopped work on January 12, 2015.

Dr. Jason Swaby, an emergency medicine specialist, completed a report on January 12, 2015. He noted appellant's complaint of thoracic and lumbar back pain radiating into the right buttock that began about six days prior when she slipped, twisted, and fell at work, without striking the ground. Appellant's physical examination demonstrated mild tenderness over the thoracic and lumbar areas of the spine with limited back range of motion. Dr. Swaby reviewed a computerized tomography (CT) scan of the thoracic spine that demonstrated mild anterior wedging in T6, T7, and T8. A lumbar spine CT scan demonstrated no acute findings. The thoracic spine CT scan further demonstrated that the middle and posterior columns were intact, and the thoracic vertebrae were properly aligned. Dr. Swaby diagnosed acute mid and low back strain with acute sciatica. He prescribed medication and recommended bed rest for two days and not to work for seven days.

In a January 21, 2015 report, Dr. Julie Lapointe, a Board-certified internist, noted a history that on January 6, 2015 appellant slipped in oil at work and twisted violently in an attempt to keep herself from falling and to protect her right hip that had preexisting problems. She reported complaints of severe pain of the entire spine radiating into the lower extremities and difficulty moving. Dr. Lapointe reviewed the January 12, 2015 thoracic CT scan and indicated that it appeared to show a compression fracture at T6-7. Physical examination demonstrated pain over the thoracic spine. Dr. Lapointe advised that appellant could return to four hours of work per day on January 26, 2015. In a January 29, 2015 report, she noted appellant's complaint of continued pain over the entire spine, radiating into both lower extremities with associated numbness and weakness. Dr. Lapointe diagnosed thoracic compression fracture, emotional lability, and back strain. In an attached duty status report (Form CA-17), she advised that appellant could work four hours of restricted duty daily.

On February 5, 2015 Dr. Lapointe reported that appellant continued to have constant pain and that she was stressed because she was unable to work due to pain. She also indicated that appellant's chronic right hip pain had worsened since the January 6, 2015 incident. In a February 5, 2015 duty status report (Form CA-17), Dr. Lapointe advised that appellant could not work. On February 9, 2015 she reported that appellant admitted that stress was a significant component of her pain and this was much improved since she stopped work. Dr. Lapointe continued to advise that appellant could not work.

In a February 17, 2015 report, Dr. Howard Huang, Board-certified in physical medicine, rehabilitation, and pain medicine, noted a history that appellant slipped at work and contorted her upper and lower back. He described her complaint of back pain, especially in the thoracic region. Physical examination elicited tenderness over the cervical, thoracic, and lumbar areas of the spine with painful neck and back range of motion. Dr. Huang reviewed appellant's thoracic CT scan report and diagnosed cervical and thoracic pain, reported a three-level thoracic compression fracture, and lumbar spondylosis, degenerative disc, and pain. He advised that she could not work.

In a development letter dated March 13, 2015, OWCP noted that, when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and was therefore administratively approved for payment of a limited amount of medical expenses. It reported that the merits of her claim had not been formally considered, and that additional factual and medical evidence was necessary to establish her claim. OWCP afforded appellant 30 days to provide the necessary factual and medical evidence.⁴

Appellant thereafter submitted a January 12, 2015 form report in which Dr. Swaby noted that she was seen that day for a January 6, 2015 employment injury. Dr. Swaby noted preexisting chronic back pain, reported examination findings of pain and abnormal range of motion, and diagnosed lumbar and thoracic sprains and sciatica. He advised that appellant could not return to work.

A March 12, 2015 magnetic resonance imaging (MRI) scan of appellant's cervical spine demonstrated cervical spondylosis at C3-4 and C4-5 without spinal cord compression. Acute fractures could not be excluded. A March 12, 2015 MRI scan of her thoracic spine demonstrated no disc bulge or herniation and old compression fractures of T6 through T8 vertebral bodies with minimal loss of height. Acute fractures could not be excluded. A March 12, 2015 MRI scan of appellant's lumbar spine demonstrated a diffuse disc bulge at L4-5 with minimal thecal sac compression and acute fractures could not be excluded. There was no change when compared to an April 26, 2013 study.

On March 19, 2015 Dr. Huang reported that appellant had continued complaints and noted his examination findings. He reviewed the MRI scan reports and indicated that her thoracic spine scan showed no acute compression fracture. Dr. Huang recommended electrodiagnostic testing of appellant's upper extremities and advised that she could not work. In correspondence dated March 26, 2015, he noted seeing her on February 17 and March 19, 2015. Dr. Huang indicated that appellant reported the onset of her conditions when she slipped and twisted at work on January 6, 2015, described examination findings, and repeated the MRI scan findings. He diagnosed: cervical spondylosis, degenerative, rule out herniated disc, and pain; rule out radiculopathy; thoracic pain and old compression fracture; lumbar spondylosis, degenerative, rule out herniated disc, and pain, rule out radiculopathy. Dr. Huang recommended electrodiagnostic testing because appellant's symptoms extended down her upper extremities. He opined that her symptoms were more likely than not related to the January 6, 2015 employment incident that exacerbated her symptoms related to the above diagnoses.

In a signed statement dated March 27, 2015, appellant indicated that she immediately felt pain through her entire spine following the January 6, 2015 incident. She reported that her pain

⁴ Appellant filed wage-loss compensation claims (Form CA-7) beginning February 22, 2015 which indicated that she had received continuation of pay from January 7 to February 21, 2015.

increased and became unbearable, and that she had not immediately sought medical treatment because she did not have a proper form from the employing establishment. Appellant also noted that she had experienced low back pain in the past, but it had been stable for many years.

By decision dated April 15, 2015, OWCP denied the claim finding that the January 6, 2015 employment incident occurred as alleged, but that the medical evidence submitted was insufficient to establish causal relationship.

Appellant requested a hearing before an OWCP hearing representative on May 13, 2015.

In an August 25, 2015 report, Dr. Lapointe noted that appellant continued to have constant back pain and could only perform light activity at home. She reviewed appellant's thoracic CT scan findings, provided examination findings, and diagnosed cervical and lumbar spondylosis without myelopathy, thoracic sprains and strains, and pathologic vertebrae fractures. Dr. Lapointe commented that appellant's cervical and lumbar spondylosis were aggravated when appellant slipped and twisted violently at work on January 6, 2015. She explained that appellant had developed new thoracic compression fractures, compared to the 2013 radiology reports of record. Dr. Lapointe reported that appellant was awaiting an updated MRI scan to assess her status.

At the hearing, held on January 19, 2016, appellant described two prior injuries including an October 1998 assault and a motor vehicle accident in 2013 when her low back was injured. She testified that her last treatment for her back was in 2013, when she underwent a lumbar spine MRI scan. Appellant indicated that she had returned to part-time work on October 20, 2015 following the January 6, 2015 incident. The hearing representative requested that appellant submit copies of the 2013 diagnostic studies, and the record was held open for 30 days. The requested studies were not submitted.

In a February 4, 2016 report, Dr. Huang described examination findings, reiterated his diagnoses, and advised that there had been no change in appellant's condition. He indicated that she could continue to work modified duty for 20 hours per week.

Following the hearing, counsel submitted a February 13, 2016 pleading in which she maintained that the January 6, 2015 employment incident aggravated appellant's previous conditions and caused new conditions and therefore, as supported by the medical evidence of record, her claim was compensable.⁵

By decision dated April 4, 2016, an OWCP hearing representative affirmed the April 12, 2015 decision finding that the medical evidence of record was insufficient to meet appellant's burden of proof because it had not differentiated, with objective findings, between the conditions related to the accepted January 6, 2015 employment incident and her multiple preexisting conditions. The hearing representative further noted that, although Dr. Lapointe diagnosed thoracic compression fractures due to the January 6, 2015 employment incident, the March 12, 2015 MRI scan indicated that the fractures were old and Dr. Huang had noted on March 19, 2015 that there was no acute compression fracture.

⁵ Counsel also referenced an April 26, 2013 lumbar MRI scan that, as noted, is not found in the record before the Board.

On February 24, 2017 appellant, through counsel, requested reconsideration. Appellant again submitted Dr. Lapointe's August 25, 2015 report, and a June 21, 2016 statement in which Dr. Huang commented: "The activity that [appellant] was doing when she sustained the compensable injury was being upright. The onset was a slip occurring while at work and she reports that she slipped ... and ended up contorting her back on January 6, 2015."

By decision dated May 22, 2017, OWCP found the medical evidence insufficient to establish appellant's burden of proof and denied modification of its prior decisions.

On July 5, 2017 appellant, through counsel, again requested reconsideration asserting that the medical evidence was sufficient to establish causal relationship. She submitted evidence previously of record and a June 16, 2017 report from Dr. Huang. In this new report, Dr. Huang noted that he previously treated appellant for low back injuries in 1998 and for hip injuries after a car accident in 2012, for which she had surgery. He advised that appellant's back was asymptomatic until her work injury of January 6, 2015. Dr. Huang noted that she reported a history that, while at work that day, she slipped on an oily substance, twisted suddenly, and caught herself from falling. He indicated that this sudden motion during the slip caused the injuries to her neck and back as appellant's spine was twisted and contorted, and this caused the vertebral body to suffer a crush or wedging injury which resulted in the compression fracture at T6-8. Dr. Huang further indicated that the "slip and fall" at work also caused undue stress on her neck and back and resulted in pressure at the central core of the discs at L4-5, C3-4, and C5-6 to shift out of their normal position and to bulge which placed pressure on the nearby nerves thus aggravating her underlying condition and caused sciatica. He related that appellant's diagnoses from the January 6, 2015 incident were compression fracture at T6-8, sciatica, disc bulges at L4-5 and C3-4, and protruding disc at C4-5. Dr. Huang concluded that, based on his review of her medical records, x-rays, MRI scans, and physical examinations, it was his medical opinion that the cervical and thoracic diagnoses were more likely than not caused or aggravated by the January 6, 2015 incident, and that the preexisting disc bulge at L4-5 and sciatica were aggravated by this incident.

By decision dated September 26, 2017, OWCP denied modification of its prior decisions. It noted that Dr. Huang's June 16, 2017 report was inconsistent because he reported both a slip and twist and a slip and fall. OWCP found his report insufficient to meet appellant's burden of proof.

On May 8, 2018 appellant, through counsel, requested reconsideration asserting that the medical evidence of record contained sufficient rationale to establish the claim. Counsel also submitted a February 27, 2018 report in which Dr. Huang reiterated that appellant's current diagnoses of compression fracture T6-8, disc bulge at C3-4, protruding disc at C4-5, and aggravation to disc bulge at L4-5 were, to a reasonable degree of medical certainty, caused by the injury that occurred at work on January 6, 2015 when appellant slipped on an oily substance, twisted suddenly, and caught herself from falling. Dr. Huang maintained that this sudden motion during the slip caused the injuries to her neck and back which resulted in the above diagnoses as her spine was twisted and contorted. He again explained that the incident caused a vertebral body to suffer a crush or wedging injury which resulted in the compression fracture at T6-8, and the contortion also caused undue stress on appellant's neck and back which resulted in pressure at the central core of the discs at C3-4 and C5-6 to shift out of their normal bulge, placing pressure on the nearby nerves. Dr. Huang opined that the slip at work also caused the bulging disc at L4-5 to intensify, causing her sciatica. He reiterated that there was a functional difference in appellant's condition before and after the January 6, 2015 incident, indicating that he had ended treatment for

her low back pain in 2013, and her back was asymptomatic until January 6, 2015. Dr. Huang indicated that, when last seen, she did not have an injury to the cervical or thoracic spines, noting that x-rays after her motor vehicle accident in 2013 showed no injuries to the cervical or thoracic spine and no change to the preexisting disc bulge at L4-5. He concluded that to a reasonable degree of medical certainty, based on review of medical records, x-rays, MRI scans, and physical examinations, appellant's current cervical, thoracic, and lumbar spine conditions were a result of the January 6, 2015 slip at work.

By decision dated July 31, 2018, OWCP denied modification of the prior decisions finding that causal relationship had not been established.

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 timely filed within the applicable time limitation period of FECA,⁶ 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 employment injury.⁷ 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.⁸

To determine if an employee has sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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 employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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.¹¹

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

¹⁰ *M.K.*, Docket No. 19-0428 (issued July 15, 2019).

¹¹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

ANALYSIS

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

In his reports dated June 16, 2017 and February 27, 2018, Dr. Huang advised that appellant's back was asymptomatic until her employment injury of January 6, 2015 when she reported that she slipped on an oily substance, twisted suddenly, and caught herself from falling. He indicated that this sudden motion during the slip caused injuries to her neck and back as her spine was twisted and contorted, and this caused the vertebral body to suffer a crush or wedging injury, which resulted in the diagnosed compression fracture at T6-8. Dr. Huang explained that the employment incident also caused undue stress on appellant's neck and back which resulted in pressure at the central core of the discs at L4-5, C3-4, and C5-6 and caused them to shift out of their normal position and to bulge, and this placed pressure on the nearby nerves, thus aggravating her underlying condition and caused sciatica. He reported that appellant's diagnoses from the January 6, 2015 incident were compression fracture at T6-8, sciatica, disc bulge at C3-4, protruding disc at C4-5, and aggravation to disc bulge at L4-5. Dr. Huang concluded that, based on his review of her medical records, x-rays, MRI scans, and physical examinations, it was his medical opinion that appellant's cervical and thoracic diagnoses were more likely than not caused or aggravated by the January 6, 2015 employment incident, and that the preexisting disc bulge at L4-5 and sciatica had been aggravated by this incident.

The Board finds that Dr. Huang's reports, when read together, contain a complete factual history of the January 6, 2015 employment incident which appellant claimed had caused her conditions, accurately note the medical history of preexisting spinal conditions, identify detailed findings upon examination, and provide medical rationale to explain how the employment incident on January 6, 2015 had resulted in the diagnosed cervical and lumbar spinal conditions. In his reports, Dr. Huang explained that the slipping incident had exerted pressure on her spine, thus causing her current cervical and lumbar conditions. While Dr. Huang initially failed to diagnose compression fractures of the thoracic spine, he later provided such a diagnosis and explained how a crush or wedging injury had resulted in compression fractures at T6-8. To the extent that an inconsistency remains as to whether a diagnosis of compression fractures from T6-8 is correct, that is an issue to address through further development of the medical record.¹² The Board finds that Dr. Huang's opinion, while not of sufficient rationale to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record as to whether appellant's cervical, thoracic, and lumbar spine conditions are causally related to the accepted employment incident.¹³

It is well established that proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is

¹² *J.J.*, Docket No. 19-0789 (issued November 22, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.810.9.b(1) (June 2015) (a claims examiner should refer a claimant to a second opinion specialist if he or she has gathered all the medical information and evidence from the attending physician and does not have an adequately reasoned opinion about causal relationship to accept the case, but does have sufficient evidence to suggest that the claimant might be entitled to benefits).

¹³ *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

done.¹⁴ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁵

The case will therefore be remanded to OWCP for further development of the medical evidence and a referral to an appropriate medical specialist for an examination and opinion on the issue of whether appellant sustained the diagnosed spinal conditions on January 6, 2015 when she slipped and twisted at work. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 28, 2020
Washington, DC

Christopher J. Godfrey, 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

¹⁴ S.C., Docket No. 19-0920 (issued September 25, 2019).

¹⁵ 20 C.F.R. § 10.121.