



## ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar conditions causally related to accepted factors of her federal employment.

## FACTUAL HISTORY

On August 7, 2017 appellant, then a 62-year-old medical assistant, filed an occupational disease claim (Form CA-2) alleging that her lumbar conditions had been aggravated by factors of her federal employment, including continuous walking and standing and various patient care duties.<sup>3</sup> She noted that she first became aware of her condition and its relationship to her federal employment on November 4, 2013. Appellant did not stop work.

In a development letter dated August 29, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her regarding the medical and factual evidence required to establish her claim. OWCP afforded appellant 30 days to provide the requested information.

OWCP thereafter received a May 16, 2017 report from Dr. John W. Ellis, a Board-certified family medicine physician. Dr. Ellis detailed appellant's history of injury on November 4, 2013 summarized medical reports and diagnostic tests he had reviewed, and provided examination findings. He reported that on November 4, 2013 her right foot was caught in a nursing monitor strip, which caused her to fall on both hands and knees. Dr. Ellis noted that appellant's current symptoms included difficulty walking and that she was stiff in the morning. Appellant's physical examination revealed decreased L5 and S1 sensation to light touch and pin prick, right foot dorsiflexion weakness, straight leg raising and Bragard's sign positive in the right leg and negative in the left leg, mild bilateral patella crepitation, restricted bilateral hip range of motion, mild right ankle lateral talofibular ligament swelling, and weakness on toe and heel walking. Dr. Ellis diagnosed sciatica, right L5 and S1 nerve impingement, lumbar intervertebral disc degeneration, spondylolisthesis, and lumbar stenosis. He concluded that appellant's employment caused, contributed to, and/or aggravated the diagnosed conditions. In support of his opinion, Dr. Ellis explained that she tripped and fell forward which caused her low back sprain and that the jerking caused a slippage of her lower back vertebrae resulting in spondylolisthesis and impingement of the spinal nerves down the legs. He also opined that appellant's continued employment following her November 4, 2013 fall aggravated her low back.

By decision dated November 20, 2017, OWCP denied appellant's claim finding that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed

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<sup>3</sup> OWCP assigned the current claim assigned OWCP File No. xxxxxx132. On November 4, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained left leg, hip, and elbow pain when she fell on her left side after her right foot got caught in a strip cord and she fell on her left side. OWCP assigned OWCP File No. xxxxxx800 to this claim, which was denied by decision dated February 14, 2014 as no medical evidence with a diagnosis had been submitted. By decision dated February 13, 2015, it modified its prior decision finding the medical evidence submitted contained a diagnosis, but affirmed as modified as causal relationship between the accepted November 4, 2013 employment incident and the diagnosed conditions had not been established. OWCP administratively combined OWCP File Nos. xxxxxx132 and xxxxxx800, with the latter designated as the master file.

low back conditions and the identified employment duties. It concluded that she had not met the requirements to establish an employment-related injury or condition.

On October 16, 2018 appellant, through counsel, requested reconsideration and submitted an October 3, 2018 report from Dr. Ellis.

In the October 3, 2018 report, Dr. Ellis again described appellant's November 4, 2013 employment incident, summarized medical reports and diagnostic tests he reviewed, and provided examination findings. He noted that her back pain was aggravated by lifting patients and bending and twisting while filing charts. Dr. Ellis noted that appellant's job duties included lifting patients, making beds, helping patients to shower, and bending. He indicated that each time she performed her job duties she sustained repetitive strains of her lower back ligaments and muscles. Dr. Ellis diagnosed back muscle tendon unit strain, back deranged discs, spondylolisthesis, and bilateral L5 and S1 spinal nerve impingement. He indicated that appellant's hip pain was in the sacroiliac joint rather than the hip joint. Dr. Ellis indicated that she had physical impairments prior to starting work for the employing establishment, including back problems and radiculopathy from a 2009 injury. Dr. Ellis concluded that appellant's employment duties aggravated her preexisting low back condition.

By decision dated December 7, 2018, OWCP denied modification.

### **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 timely filed within the applicable time limitation of FECA,<sup>5</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 employment injury.<sup>6</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>7</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;<sup>8</sup> (2) medical evidence establishing the presence or existence of the disease or condition for which

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

<sup>5</sup> *S.H.*, Docket No. 19-0631 (issued September 5, 2019); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *A.P.*, Docket No. 19-1158 (issued October 29, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *S.C.*, *id.*; *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

compensation is claimed;<sup>9</sup> and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence required to causal relationship is rationalized medical evidence.<sup>11</sup> 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 employee.<sup>12</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>13</sup>

In a case where 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.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar conditions causally related to the accepted factors of her federal employment.

Appellant submitted reports by Dr. Ellis in support of his claim. In his May 16, 2017 and October 3, 2018 reports, Dr. Ellis noted her employment history, her claimed November 4, 2013 employment-related injury under OWCP File No. xxxxxx800, and her preexisting conditions, and he reviewed medical records and presented examination findings. In his May 16, 2017 report, he diagnosed sciatica, right L5 and S1 nerve impingement, lumbar intervertebral disc degeneration, spondylolisthesis, and lumbar stenosis, all of which he attributed to appellant's November 4, 2013 employment incident and to her employment duties. In his October 3, 2018 report, Dr. Ellis diagnosed back muscle unit tendon strain, deranged back discs, bilateral L5 and S1 spinal nerve impingement, and spondylolisthesis, all of which he opined had been aggravated by her employment duties.

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<sup>9</sup> *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>10</sup> *V.G.*, Docket No. 19-0908 (issued October 25, 2019); *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018); *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>11</sup> *V.G.*, *id.*; *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *V.G.*, *supra* note 10; *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>13</sup> *Id.*

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *G.G.*, Docket No. 18-0550 (issued October 1, 2018).

In his May 16, 2017 report, Dr. Ellis explained that the jerking caused by appellant's November 4, 2013 trip and falling forward caused a slippage of her lower back, resulting in spinal nerve impingement down her legs and spondylolisthesis. He opined that the diagnosed conditions had been aggravated by her employment following her slip and fall on November 4, 2013. In his October 3, 2018 report, Dr. Ellis opined that appellant's preexisting back conditions had been aggravated by both her prior November 4, 2013 employment incident and her work duties. Specifically, he explained that her duties of lifting patients and bending and twisting while filing charts aggravated her back pain, shoulders, caused her lower back muscles, and ligaments to be repetitively strained. While Dr. Ellis generally supported causal relationship, his opinion was insufficiently rationalized. The Board has previously held that mere conclusory statements, not fortified by explanation, are insufficient to establish causal relationship between employment factors and diagnosed conditions.<sup>15</sup> Without further explanation as to how, physiologically, the movements involved in appellant's employment duties caused or contributed to the diagnosed lumbar conditions, these opinions on causal relationship are of limited probative value.<sup>16</sup> A rationalized medical opinion is especially necessary in light of appellant's preexisting lumbar conditions.<sup>17</sup> Without medical rationale explaining how the accepted employment factors caused, contributed to, or aggravated the diagnosed conditions, Dr. Ellis' reports are insufficient to establish her claim.<sup>18</sup>

On appeal counsel asserts that Dr. Ellis' reports are sufficient to establish entitlement or to require referral to a second opinion physician. For the reasons set forth above, the Board finds the reports of Dr. Ellis are insufficiently rationalized to warrant either acceptance of her claim or further development of the medical opinion evidence by referral for a second opinion.

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 lumbar conditions causally related to accepted factors of her federal employment.

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<sup>15</sup> *V.S.*, Docket No. 19-0936 (issued October 7, 2019); *M.S.*, Docket No. 19-0587 (issued July 22, 2019); *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *N.M.*, Docket No. 010-0283 (issued August 19, 2010).

<sup>16</sup> *Id.*

<sup>17</sup> *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *D.M.*, Docket No. 19-0389 (issued July 16, 2019).

<sup>18</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2020  
Washington, DC

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

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

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