

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted July 10, 2018 employment incident.

FACTUAL HISTORY

On July 11, 2018 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2018 she sustained an injury to her chest and back when she was involved in a motor vehicle accident while driving her postal vehicle in the performance of duty. She stopped work on July 10, 2018.

On July 10, 2018 appellant was treated in the emergency room by Yaakov Levenshetyn, a physician assistant, who diagnosed motor vehicle accident and provided discharge instructions.

In a statement dated July 11, 2018, appellant noted that on July 10, 2018 she was driving back to the station to clock out when she was struck from behind by a car driving at full speed causing her to hit the vehicle in front of her.

In a July 11, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care with Dr. Jeff Mollins, a chiropractor. In an attending physician's report, Part B of the Form CA-16, dated July 13, 2018, Dr. Mollins advised that appellant was involved in a motor vehicle accident in her postal truck on July 10, 2018. He diagnosed lumbosacral syndrome, lumbar strain/sprain, and lumbar pain. Dr. Mollins noted that appellant was totally disabled from work beginning July 10, 2018.

On July 12, 2018 Dr. Mollins treated appellant for injuries sustained in a work-related accident on July 10, 2018, and noted that she was tentatively totally disabled until August 13, 2018. In a duty status report (Form CA-17) dated July 12, 2018, he again indicated that she could not resume work.

In a July 16, 2018 development letter, OWCP informed appellant of the deficiencies of her claim, noting that no diagnosis of any condition resulting from her injury had been received. It advised her of the type of factual and medical evidence needed and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence. No additional evidence was received.

By decision dated August 16, 2018, OWCP accepted that the employment incident occurred, as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. It subsequently received an unsigned report/log listing the multiple occasions that appellant was treated by Dr. Mollins. OWCP noted diagnoses of lumbosacral radicular syndrome, sprain of the other parts of the lumbar spine, low back pain, and thoracic sprain/strain.

In an undated report, Dr. Mollins diagnosed lumbosacral radiculopathy, sprain of the other parts of the lumbar spine, low back pain, and thoracic sprain/strain. Appellant reported being involved in a motor vehicle accident at work on July 10, 2018 and sustaining injuries to her back. He checked a box marked “Yes,” that the incident appellant described was the competent medical cause of the injury/illness. Dr. Mollins, in a September 7, 2018 report, noted that he was treating appellant for injuries sustained in a July 10, 2018 work-related accident and held appellant off work until October 8, 2018. In a duty status report (Form CA-17) of even date, Dr. Mollins noted clinical findings of increased low back pain and again advised that appellant was unable to resume work.

An August 15, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine revealed posterior disc bulges at L4-L5 and L5-S1.

On August 22, 2018 appellant underwent an electromyogram (EMG) performed by Dr. R.C. Krishna, a Board-certified neurologist, which revealed evidence of bilateral L5-S1 lumbar radiculopathy and right peroneal axonal neuropathy.

In reports dated September 17 and October 1, 2018, Dr. Krishna treated appellant for injuries sustained to her chest and back after a work-related motor vehicle accident in which she was hit from behind by another vehicle. He opined that based on appellant’s history and a physical examination, to a reasonable degree of medical certainty, her physical injuries were the competent provocative cause of her impairment and disability causally related to the accident noted above. In a functional capacity evaluation (FCE) dated October 29, 2018, Dr. Krishna noted that appellant demonstrated functional capacity below average for her age and gender. Appellant’s work capability was less than sedentary work, but she demonstrated rehabilitation potential.

In a letter dated August 23, 2018, appellant requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. The hearing was held on January 16, 2019.

By decision dated February 25, 2019, the Branch of Hearings and Review accepted that appellant had established that the July 10, 2018 employment incident occurred as alleged and that the medical evidence of record established a diagnosed condition. However, it affirmed the denial of the claim as the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and the accepted July 10, 2018 employment incident.

On March 29, 2019 appellant requested reconsideration.

In support thereof OWCP received reports dated January 23 and March 4, 2019, wherein Dr. Krishna noted his treatment of appellant and diagnoses of thoracic sprain/strain, lumbar sprain/strain, and lumbar radiculitis. Dr. Krishna opined that, based on appellant’s history and physical examination, that her physical injuries were the competent provocative cause of her impairment and disability and was causally related to the work-related motor vehicle accident.

In a May 13, 2019 report, Dr. Krishna noted that he performed an FCE and diagnosed lumbar radiculopathy, right shoulder derangement, and concussion. He noted that appellant was capable of sedentary work with restrictions.

By decision dated August 2, 2019, OWCP denied modification of the February 25, 2019 decision.

On October 17, 2019 appellant, through her representative, requested reconsideration. In support thereof, appellant continued to submit additional evidence, including chiropractic treatment notes from Dr. Mollins dated January 3 to November 27, 2019.

Also received was a September 9, 2019 report from Dr. Krishna, who opined that, based on appellant's history and physical examination, her physical injuries were the competent provocative cause of her impairment and disability and was causally related to the July 10, 2018 accident.

In an October 2, 2019 report, Dr. Krishna explained that when appellant's truck was hit from behind by another vehicle she sustained a thoracic sprain/strain. He defined a strain as a muscle that is overstretched to the point where the muscle fiber fails or tears and a sprain is when a ligament is overstretched to where the ligament fails or tears. Dr. Krishna indicated that both a sprain and strain can result from sudden injury, which was consistent with appellant's truck being hit from behind by another vehicle. He further noted that a lumbar sprain was caused when ligaments (the tough bands of tissue that hold bones together) are torn from their attachment, which can result from a sudden injury and again was consistent with appellant's truck being hit from behind by another vehicle. Dr. Krishna explained that sudden injury that occurs with a car accident can cause radiculitis or inflammation of the spinal nerve root. He opined that appellant developed lumbar radiculitis from her vehicle being hit from behind, which was supported by the EMG study of August 22, 2018 and MRI scan findings on August 15, 2018, which revealed inflammation of the spinal nerve. Dr. Krishna opined that these findings were specifically due to the motor vehicle accident. On October 2, 2019 he again performed an FCE and diagnosed lumbar radiculopathy, right shoulder derangement, and concussion. He noted that appellant demonstrated the ability to perform sedentary work with restrictions.

By decision dated January 9, 2020, OWCP denied modification of the August 2, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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

⁴ *Id.*

⁵ *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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁸ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the employment incident.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹⁴

ANALYSIS

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

In his October 2, 2019 report, Dr. Krishna explained that appellant sustained a thoracic sprain/strain when her truck was hit from behind by another vehicle. He defined a strain as a muscle that is overstretched to the point where the muscle fiber fails or tears and defined a sprain as a ligament that is overstretched to the point where the ligament fails or tears. Dr. Krishna indicated that both a sprain and strain can result from sudden injury, which was consistent with the effects of appellant's truck being hit from behind by another vehicle. Similarly, he noted that a lumbar sprain was caused when ligaments (the tough bands of tissue that hold bones together) are torn from their attachment, which can result from a sudden injury which was also consistent with the effects of appellant's truck being hit from behind by another vehicle. Dr. Krishna also

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹² *T.H.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁴ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

noted that appellant developed lumbar radiculitis (inflammation of the spinal nerve root) from her vehicle being hit from behind, which was supported by the EMG findings of August 22, 2018 and MRI scan findings on August 15, 2018 that revealed inflammation of the spinal nerve. He opined that these findings were specifically due to the motor vehicle accident.

The Board finds that Dr. Krishna's October 2, 2019 report is sufficient to require further development of the medical evidence. The physician is a Board-certified neurologist and is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. Dr. Krishna, in his report, provides a pathophysiological explanation as to how being in a vehicle that is suddenly struck from behind by another vehicle resulted in a diagnosis of a thoracic sprain/strain, lumbar sprain/stain, and lumbar radiculitis. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁵ Accordingly, Dr. Krishna's medical opinion is well rationalized and is therefore sufficient to require further development of appellant's claim.¹⁶

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.¹⁷ OWCP has an obligation to see that justice is done.¹⁸

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment incident either caused or aggravated her diagnosed conditions.¹⁹ If the second opinion disagrees with the explanations provided by Dr. Krishna, he or she must provide a fully-rationalized explanation explaining why the accepted employment incident was insufficient to have caused or aggravated her diagnosed conditions of thoracic sprain/strain, lumbar sprain/stain, and lumbar radiculitis. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁵ *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.

¹⁶ *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).

¹⁷ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁸ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

CONCLUSION

The Board finds that this case is not in posture for decision.²⁰

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 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: November 13, 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

²⁰ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).