

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted October 2, 2019 employment incident.

FACTUAL HISTORY

On October 21, 2019 appellant, then a 20-year-old licensed nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2019 she injured her back when she was transferring a veteran from a wheelchair to his bed and he lost his footing, jerking her along with him, while in the performance of duty. She stopped work on October 17, 2019.

In an October 2, 2019 e-mail, appellant provided details of the incident that occurred during her evening shift that day. She indicated that when proceeding to help him stand up from under his arm and he lost his footing, went towards the bed and jerked her along with him. Afterwards, appellant noted that her back pain had progressively become more irritated throughout the night.

In a medical report and a report of employee's emergency treatment dated October 4, 2019, Lisa Savage, a registered nurse, evaluated appellant for lower back pain and stiffness related to the alleged October 2, 2019 employment incident in which she was attempting to transfer a patient from his wheelchair to his bed. She assessed a lower back muscle strain and recommended limited-duty work restrictions.

In an October 18, 2019 e-mail, C.P., a supervisor, recalled that on October 17, 2019 she reprimanded/cautioned appellant two times during the same shift about performing Hoyer transfers of patients by herself. In an October 21, 2019 statement and an undated statement, A.S. and R.G., nursing assistants, explained that on October 17, 2019 they were asked by C.P. if they had assisted appellant in the transfer of a patient because she had indicated they had. They responded that they did not provide assistance in transferring the patient.

In an October 25, 2019 letter, the employing establishment controverted appellant's claim, asserting that her injury was caused by her own willful misconduct.

In an October 28, 2019 report of contact, an unidentifiable registered nurse with the employing establishment recounted that it had received an October 18, 2019 letter from appellant's provider holding her off work due to an alleged employment-related injury. The registered nurse indicated that on that same day statements were provided regarding an incident occurring on October 17, 2019 where appellant repeatedly transferred a patient against medical orders. Appellant was subsequently reprimanded and a discussion was held with her on October 21, 2019. It was further noted that she returned to the office on October 25, 2019 to receive a duty status report (Form CA-17).

Appellant also submitted medical notes dated from October 18 to 31, 2019 from Drs. Amy Martel and Hillary Alvarez, Board-certified in family medicine, and Liza Ferris, a registered nurse, requesting that she remain out of work through November 4, 2019 pending evaluation by physical therapy.

In an October 31, 2019 physical therapy evaluation, Maria Chorzewski, a physical therapist, evaluated appellant for right lower back pain related to an October 2, 2019 employment incident in which she was transferring a patient from his wheelchair when he fell to the side.

A November 4, 2019 Form CA-17 with an illegible signature diagnosed muscle spasms and low back pain due to the alleged October 2, 2019 employment incident in which appellant was transferring a patient and suggested that she return to work on November 11, 2019.

In a November 5, 2019 letter, M.D., a workers' compensation specialist, controverted appellant's traumatic injury claim, asserting that she committed willful misconduct. He explained that appellant utilized unsafe patient handling practices on October 2, 2019 and also on October 17, 2019 when she returned from limited duty. Appellant was counseled on multiple occasions, but still chose to transfer patients on her own. She was written up and reprimanded for her actions on October 21, 2019.

In development letters dated November 5 and 12, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP provided a factual questionnaire inquiring about the circumstances surrounding her claimed injury for appellant's completion and requested that she submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. It afforded appellant 30 days to respond.

Appellant submitted competency assessment checklists dated July 17 and August 31, 2019 with illegible signatures demonstrating a satisfactory level of lifting competency for multiple performance criteria.

In an October 18, 2019 medical report, Dr. Martel recounted the alleged October 2, 2019 employment incident in which appellant injured her lower back while transferring a patient from his wheelchair to his bed and diagnosed low back pain. She recommended that appellant remain out of work through October 24, 2019 and referred her to physical therapy.

In an October 18, 2019 workers' compensation form, Nurse Ferris diagnosed a right lumbar muscle strain and opined that appellant's injury occurred when she tweaked her right lower back while transferring a patient. In clinical notes of even date, she suggested that appellant remain out of work and prescribed medication to treat her injury.

In a November 4, 2019 medical report, Dr. Martel recounted the development of appellant's lower back pain as it related to the alleged October 2, 2019 employment incident. Appellant informed her that she tried to go back to work part time, but the employing establishment was having difficulty accommodating her schedule. On evaluation Dr. Martel diagnosed back pain. In a workers' compensation form of even date, she diagnosed a right lumbar muscle strain.

In a November 21, 2019 medical note, Dr. Martel requested that appellant continue to remain off work through November 27, 2019 at which time she would be evaluated by orthopedics.

In a November 27, 2019 Form CA-17 and workers' compensation medical form, Dr. Levy Clifford, a Board-certified orthopedic surgeon, diagnosed a lumbar contusion due to the alleged October 2, 2019 employment incident in which appellant injured her back transferring a patient. He opined that she could return to limited-duty work with restrictions.

In a November 29, 2019 rehabilitation services reevaluation report, Joshua Clark, a physical therapist, provided his assessment of appellant's progression through physical therapy to treat her low back pain.

By decision dated December 20, 2019, OWCP denied appellant's traumatic injury claim. It accepted that the October 2, 2019 employment incident occurred, as alleged, but denied the claim, finding that the evidence of record was insufficient to establish a valid medical diagnosis in connection with the accepted employment incident. Therefore, appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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

³ *Supra* note 2.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q)

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.⁸

ANALYSIS

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

Dr. Martel, in her November 4, 2019 medical report and workers' compensation form, discussed appellant's history of low back pain related to the accepted October 2, 2019 employment incident in which she injured her back transferring a patient from his bed to his wheelchair. On evaluation she diagnosed back pain and a right lumbar muscle strain. Additionally, in his November 27, 2019 Form CA-17 and workers' compensation medical form, Dr. Levy diagnosed a lumbar contusion due to the accepted October 2, 2019 employment incident. Therefore, the Board finds that the evidence of record establishes diagnosed medical conditions. OWCP has not reviewed the medical evidence of record regarding the issue of whether the established diagnoses are causally related to the accepted October 2, 2019 employment incident.

As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision as to whether her diagnosed condition is causally related to the accepted October 2, 2019 employment incident.

⁸ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2019 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: October 27, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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