

**United States Department of Labor
Employees' Compensation Appeals Board**

M.B., Appellant)	
)	
and)	Docket No. 20-0740
)	Issued: October 6, 2020
U.S. POSTAL SERVICE, BLYTHEBOURNE)	
POST OFFICE, Brooklyn, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2020 appellant filed a timely appeal from a January 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 16, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 12, 2018 appellant, then a 50-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2018 he injured his right hip and buttock when sorting and lifting parcels while in the performance of duty. He stopped work on February 6, 2018.

In a February 8, 2018 medical note, Dr. Billy Ford, a Board-certified anesthesiologist, diagnosed lumbar radiculopathy and a lumbar herniated intervertebral disc. He recommended that appellant return to limited-duty work.

In a February 9, 2018 personal statement, appellant explained that on or about January 16, 2018 he began to experience pain in his right hip and buttock while sorting parcels. He did not think much of it at first, but the pain became more severe after 24 hours. Appellant visited Dr. Ford who scheduled a magnetic resonance imaging (MRI) scan and prescribed pain medication until he was diagnosed with lumbar radiculopathy on February 8, 2018. He stated that his injury was related to strenuous activity, repetitive motions, and heavy lifting and that he informed Dr. Ford that his duties at work consisted of bending and lifting approximately 700 to 800 parcels per day, with some weighing up to 70 pounds. Dr. Ford scheduled appellant to receive a steroid injection on February 20, 2018.

In a February 12, 2018 medical note, Robert Lopresto, a physician assistant, noted that appellant arrived to the emergency department with complaints of pain in his right hip and buttock. On evaluation he diagnosed right hip and buttock pain and provided him with home care treatment instructions.

In a statement of even date, appellant explained that on the night of February 11, 2018 he went to the hospital due to severe pain he experienced in his hip and buttocks. He was told to visit orthopedics for further evaluation.

Dr. Philip Rafiy, a Board-certified orthopedic surgeon, in a February 12, 2018 medical report, provided that appellant presented with right hip and buttock pain due to lifting boxes over the prior month. On review of the February 2, 2018 MRI scan, he diagnosed right trochanteric bursitis, right ischial gluteal bursitis, lumbar mechanical pain and ruled out radiculopathy. In an attached medical note, Dr. Rafiy recommended work restrictions for appellant.

Dr. Rafiy noted in a February 21, 2018 medical report that appellant advised that he injured his back on January 16, 2018 while lifting and sorting boxes at work on a constant basis. He performed a steroid injection to treat appellant's right trochanteric bursitis, right ischial gluteal bursitis, and lumbar mechanical pain.

In a February 26, 2018 medical note, Dr. Rafiy estimated that appellant would be totally disabled from work from February 26 to March 28, 2018 due to his lumbar mechanical pain and right ischial gluteal bursitis.

Appellant also submitted multiple medical reports dated from February 8, 2016 to November 1, 2017 concerning a separate injury to his right ankle and foot.

In a development letter dated March 16, 2018, OWCP informed appellant that his 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 advised him of the type of factual and medical evidence required to establish his traumatic injury claim and furnished a questionnaire for his completion to provide further details regarding the circumstances of the claimed January 16, 2018 employment incident. It also requested a narrative medical report from appellant's physician which provided the physician's rationalized medical explanation as to how the alleged employment incident caused his diagnosed condition. OWCP afforded him 30 days to respond.

In response to OWCP's development questionnaire, appellant submitted a March 23, 2018 statement in which he explained that he injured his back sometime between 9:00 am and 10:00 am while lifting a box. He believed his injury was a strain and attempted to work through it, but when the pain did not go away he made a doctor's appointment. Appellant also clarified that he sustained a traumatic injury and asserted that continuously lifting boxes for seven to eight hours caused his condition. He noted that he did not have any other previous injuries or hobbies that contributed to his pain.

In a March 28, 2018 medical report and an attached note of even date, appellant informed Dr. Rafiy that his injection provided moderate relief of his symptoms, but he was still experiencing residual pain. Dr. Rafiy diagnosed right trochanteric bursitis, right ischial gluteal bursitis, and lumbar mechanical pain, and advised appellant to continue physical therapy. He opined that, as a result of his injury, appellant was unable to perform his normal work duties.

In an April 3, 2018 doctor's progress report, Dr. Rafiy diagnosed right hip trochanteric bursitis, right hip gluteal tendinitis and low back pain. He checked a box marked "Yes" to indicate his opinion that the employment incident was a competent cause of injury and noted that appellant was 25 percent impaired temporarily.

Appellant also submitted physical therapy notes with an illegible signature dated from March 20 to April 11, 2018 detailing his treatment for his diagnosed conditions.

By decision dated April 17, 2018, OWCP denied appellant traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted January 16, 2018 employment incident.

OWCP continued to receive evidence. Appellant submitted additional physical therapy notes dated from March 5 to April 23, 2018.

On April 27, 2018 appellant requested a review of the written record before an OWCP hearing representative.

In an April 25, 2018 medical report, Dr. Rafiy explained that appellant's injuries were consistent with mechanical repetitive motion causally related to his job duties as a postal worker. In a letter of even date, he noted appellant's history of injury and opined, with a reasonable degree of medical certainty, that appellant's diagnosed conditions were caused by the January 16, 2018 employment incident.

By decision dated August 29, 2018, OWCP's hearing representative affirmed OWCP's April 17, 2018 decision.

On September 18, 2018 appellant submitted a letter dated September 11, 2018,² in which he requested reconsideration of OWCP's August 29, 2018 decision. He attached an unsigned note explaining trochanteric bursitis is typically caused by repeated blunt trauma to the hips or an acute trauma that may occur due to improperly lifting or carrying a heavy load.

In a September 6, 2018 letter, Dr. Rafiy reviewed appellant's history of injury related to the January 16, 2018 employment incident and diagnosed lumbar mechanical pain, lumbar discogenic pain, right hip trochanteric bursitis and right ischial pain. He opined that appellant's injuries were sustained during the course of his employment on January 16, 2018 and opined that his diagnoses were consistent with injuries that are causally related to the incident as reported by appellant.

By decision dated September 17, 2019, OWCP denied modification of its August 29, 2018 decision.

OWCP continued to receive evidence. In an October 9, 2019 letter, Dr. Rafiy explained that appellant's diagnosis of right hip bursitis was consistent with the mechanism of action of contracted muscles while lifting a heavy object. He opined that appellant's injury was caused by the January 16, 2018 employment incident.

On October 31, 2019 appellant requested reconsideration of OWCP's September 17, 2019 decision.

By decision dated January 28, 2020, OWCP denied modification of its September 17, 2019 decision.

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,³ 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

² Appellant resubmitted his request for reconsideration on June 19, 2019.

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.⁹ 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 factors identified by the claimant.¹⁰

ANALYSIS

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

In a series of reports, Dr. Rafiy provided a medical history, physical examination findings, and a review of diagnostic testing.

Dr. Rafiy described appellant's employment duties and noted that on January 16, 2018 he began to feel pain in his right hip and buttock after sorting and lifting boxes on a constant basis. He described appellant's physical examination findings, which revealed that he was experiencing residual pain since the January 16, 2018 employment incident. Dr. Rafiy reviewed diagnostic testing, explaining that a February 2, 2018 MRI scan revealed right trochanteric bursitis and right ischial gluteal bursitis and ruled out radiculopathy. He opined that appellant's injuries to his right hip are consistent with the mechanical repetitive motions of appellant's employment duties as a postal worker. In his October 9, 2019 letter, Dr. Rafiy again explained that appellant's diagnosis of right hip bursitis was consistent with the mechanism of action of contracted muscles while lifting heavy objects. 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

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹⁰ *I.J.*, 59 ECAB 408 (2008).

evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹¹ Accordingly, Dr. Rafiy's medical opinion is well-rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹²

While Dr. Rafiy did not fully explain the mechanism of the injury, he provided an opinion based on examination findings and an accurate factual and medical background, that lifting heavy boxes on a constant basis precipitated appellant's right trochanteric bursitis and right ischial gluteal bursitis.¹³ He demonstrated an understanding of appellant's employment duties and discussed how these factors caused or aggravated his condition. Dr. Rafiy provided a medical history and based his findings on diagnostic testing and physical examination.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵

Although Dr. Rafiy's reports are insufficient to meet appellant's burden of proof to establish his claim, they are sufficient to require OWCP to further develop the medical evidence and the case record.

On remand OWCP shall prepare a statement of accepted facts (SOAF) and then refer appellant, along with an updated SOAF and the case record, to an appropriate second-opinion physician to obtain a fully-rationalized opinion as to whether his conditions are causally related to the January 16, 2018 employment incident, directly or through aggravation, precipitation, or acceleration.¹⁶ The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Rafiy's. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ *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.

¹² *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *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).

¹³ *S.T.*, Docket No. 18-1119 (issued March 6, 2019).

¹⁴ See *P.K.*, Docket No. 08-2551 (issued June 2, 2009); see also *Horace Langhorn*, 29 ECAB 820 (1978).

¹⁵ *R.M.*, Docket No. 20-0342 (issued July 30, 2020).

¹⁶ *P.A.*, Docket No. 09-0319 (issued November 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the January 28, 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: October 6, 2020
Washington, DC

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

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

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