

employment injury; and (2) whether she has met her burden of proof to establish total disability on November 16, 2013 and for the periods November 26, 2013 to January 23, 2014 and March 8 to June 19, 2014 causally related to her accepted July 13, 2013 employment injury.

FACTUAL HISTORY

On September 17, 2015 appellant, then a 48-year-old clerk/mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2013 she injured her neck and back as a result of a motor vehicle accident while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that she stopped work on the date of injury and returned to work on June 21, 2014.

OWCP received a September 27, 2013 medical report from Dr. Nunzio Saulle, an attending Board-certified physiatrist. Dr. Saulle noted a history of a motor vehicle accident that occurred on July 13, 2013. Appellant informed him that she had been unable to return to work due to her ongoing symptoms. Dr. Saulle discussed examination findings and reviewed diagnostic test results. He diagnosed cervical and lumbar disc herniations and disc bulges, a chest wall contusion, and anxiety. Dr. Saulle advised that appellant remained disabled from work.

In a November 24, 2015 report, Dr. Everton A. Prospere, Board-certified in internal, palliative, and geriatric medicine and hospice care, noted that appellant was seen in his office following a July 13, 2013 motor vehicle accident. He noted that she reported signs and symptoms including whiplash and neck, chest, and upper and lower back pain that were related to the motor vehicle accident.

On January 14, 2016 OWCP accepted appellant's claim for cervical and lumbar sprain, and a chest wall contusion.

On March 20, 2017 appellant filed wage-loss compensation claims (Form CA-7) for leave without pay (LWOP) used on November 16, 2013 and for the periods November 26, 2013 to January 23, 2014 and March 8 to June 19, 2014.

In a March 30, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional medical evidence supporting the alleged periods of total disability. OWCP afforded appellant 30 days to respond.

OWCP received an April 25, 2017 report by Dr. Stella M.P. Mansukhani, an attending Board-certified physiatrist. Dr. Mansukhani noted a history of the accepted July 13, 2013 employment injuries. She indicated that appellant was under her care from November 11, 2013 through June 18, 2014 and that appellant had been out of work from July 13, 2013 through June 20, 2014 due to her injuries. Dr. Mansukhani noted diagnoses of cervical and lumbar spine disc bulges and herniations, and an anterior chest wall contusion. She also noted that appellant was totally disabled and unable to work due to her injuries. Dr. Mansukhani had advised appellant to avoid activities that would exacerbate her pain. She noted that appellant had difficulty lifting, pushing, and pulling heavy objects, and with prolonged sitting, bending, and carrying. Dr. Mansukhani had given appellant a note to return to work on June 21, 2014.

By decision dated June 14, 2017, OWCP denied appellant's wage-loss compensation claims for November 16, 2013 and the periods November 26, 2013 to January 23, 2014 and March 8 to June 19, 2014. It found that she had not submitted rationalized medical evidence sufficient to establish that the claimed disability was causally related to her accepted July 13, 2013 employment-related injury.

On July 6, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received an undated report from Dr. Saulle. In this report, Dr. Saulle reiterated appellant's history of injury on July 13, 2013 and the prior diagnoses of cervical and lumbar herniations and disc bulges, a chest wall contusion, and anxiety. He opined that, within a reasonable degree of medical certainty, she was totally disabled from work from July 13 to November 11, 2013 due to the above conditions. Dr. Saulle reasoned that appellant was unable to perform heavy lifting due to her chest contusion and lumbar herniation and impingement. He further reasoned that she was unable to sit or stand for prolonged periods due to her lumbar herniation and impingement. Additionally, Dr. Saulle indicated that appellant had difficulty with turning her head side to side or up and down due to her cervical disc herniation.

In an additional report dated January 4, 2018, Dr. Mansukhani again noted appellant's history of injury on July 13, 2013. She reviewed Dr. Saulle's notes and based on these notes, her examination, and diagnostic test results, she concurred with his. Dr. Mansukhani determined that appellant was totally disabled from work for the period November 11, 2013 through June 18, 2014. She explained her opinion by reiterating appellant's diagnoses of cervical and lumbar spine disc bulges and herniations and an anterior chest wall contusion, and her recommendation that appellant should avoid activities that would exacerbate her injuries due to her difficulty with lifting, pushing, and pulling heavy objects, and prolonged sitting, bending, and carrying. Dr. Mansukhani again indicated that she released appellant to return to work on June 21, 2014.

By decision dated February 1, 2018, OWCP's hearing representative affirmed the June 14, 2017 decision, finding that appellant had not established disability for the period November 16, 2013 to June 19, 2014. He explained that the medical evidence of record did not contain a rationalized medical opinion sufficient to establish that appellant's diagnosed cervical, lumbar, and emotional conditions and total disability from work during the claimed periods were causally related to her accepted July 13, 2013 employment-related injury.

On January 26, 2019 appellant, through counsel, requested reconsideration. She submitted a copy of Dr. Saulle's undated report. Appellant also submitted an additional report dated January 23, 2019 by Dr. Mansukhani. In this report, Dr. Mansukhani again noted her prior physical and emotional diagnoses and opinion on causal relationship. She noted that trauma is a well-established precipitating cause of disc herniation and that individuals with disc degeneration can go their entire lives without symptoms related to this condition in the absence of precipitating trauma. The application of sudden forces in a degenerated disc (as people age, the discs lose some of their water content which makes it less flexible and more prone to tearing or rupturing even with minor strain or twist), is known to precipitate disc herniation. The pathophysiology of pain in disc herniation is by mechanical compression or by local inflammatory response. Dr. Mansukhani indicated that this explained the temporal relationship of appellant's symptoms to the accident.

She opined that the acute trauma was the precipitating factor causing appellant's symptoms and disabilities related to the disc herniation. Dr. Mansukhani referenced medical literature in support of her opinion. She again found that appellant was totally disabled from November 11, 2013 until June 18, 2014 as a result of her job-related motor vehicle accident. In addition, Dr. Mansukhani continued to maintain that appellant was unable to return to work until June 21, 2014 based on her diagnoses and work restrictions.

OWCP, by decision dated April 26, 2019, denied modification of the February 1, 2018 decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁴ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁵ Additionally, the opinion of the physician 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 factor(s) identified by the claimant.⁶

ANALYSIS -- ISSUE 1

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

In her January 23, 2019 report, Dr. Mansukhani noted appellant's history of injury and the diagnosed medical conditions. She opined that appellant's conditions were work related and explained that the application of sudden forces in a degenerated disc (as people age, the discs lose some of their water content which makes it less flexible and more prone to tearing or rupturing even with minor strain or twist), is known to precipitate disc herniation. Dr. Mansukhani further explained the pathophysiology of pain in a disc herniation is caused by mechanical compression or by local inflammatory response. She indicated that this explained the temporal relationship of appellant's symptoms to the accepted employment incident. Dr. Mansukhani opined that the acute

³ *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

trauma that appellant had experienced was the precipitating factor causing the symptoms and disabilities related to the disc herniation. She also referenced supportive medical literature in support of her opinion.

Accordingly, the Board finds that Dr. Mansukhani provided an affirmative opinion on causal relationship. While Dr. Mansukhani's report is not sufficiently rationalized to meet appellant's burden of proof, it is sufficient, given the absence of opposing medical evidence, to require further development of the record.⁷

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.⁸ OWCP has an obligation to see that justice is done.⁹

The case will be remanded to OWCP for such further development of the record, as deemed necessary, to be followed by the issuance of a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision.¹⁰

⁷ See *T.M.*, Docket No. 19-1556 (issued May 6, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ See *C.H.*, Docket No. 18-0108 (issued July 19, 2018); see, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

⁹ *C.H., id.*; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁰ Due to the disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 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: September 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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