



## ISSUE

The issue is whether appellant has met his burden of proof to establish a low back condition causally related to the accepted October 16, 2017 employment incident.

## FACTUAL HISTORY

On October 16, 2017 appellant, then a 31-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on that day his lower back tightened up when he was in a switcher truck moving trailers while in the performance of duty. He indicated that when he exited the switcher truck he could barely walk. Appellant stopped work on the alleged date of injury.

On October 16, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16), authorizing appellant to seek medical care for a lower back sprain from a medical facility.

At the designated medical facility, appellant was treated on October 16, 2017 by Dr. Leslie B. Hensley, an osteopath and specialist in occupational medicine, who diagnosed sprain of the ligaments of the lumbar spine, initial encounter. He reported that his lower back started to tighten up as he was driving a switcher truck. Dr. Hensley returned appellant to work full time with restrictions. In a duty status report (Form CA-17) of even date, he noted clinical findings of sprain of the ligaments of the lumbar spine, initial encounter and returned appellant to work with restrictions.

In an October 24, 2017 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

In reports dated October 16 to 25, 2017, Dr. Hensley treated appellant for low back pain which began on October 16, 2017 when appellant was driving a switcher truck. He diagnosed sprain of ligaments of the lumbar spine, initial encounter. Dr. Hensley reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine which revealed mild degenerative disease. He opined that the cause of appellant's condition was related to work activities and returned appellant to restricted duty. In Form CA-17 reports dated October 23 and 25, 2017, Dr. Hensley again noted clinical findings of sprain of the ligaments of the lumbar spine, initial encounter and returned appellant to full-time sedentary duty.

An October 24, 2017 MRI scan of the lumbar spine revealed minimal degenerative changes.

Appellant was treated in follow-up by Dr. Hensley on November 8, 2017. Dr. Hensley diagnosed sprain of the ligaments of the lumbar spine and noted an essentially normal examination and MRI scan study. He indicated that he had no objective reason to keep appellant off work; however, appellant was argumentative and wanted to stay on restrictions. Dr. Hensley again opined that the cause of appellant's condition was related to work activities. In a Form CA-17

dated November 8, 2017, he reiterated his clinical findings of sprain of the ligaments of the lumbar spine, initial encounter, and continued restrictions for full-time sedentary duty.

In a Form CA-17 dated November 15, 2017, Dr. William R. Bohl, a Board-certified orthopedist, noted clinical findings of tenderness of the upper thoracic and lower extremities and diagnosed degenerative disc disease. He returned appellant to full-time work with restrictions.

By decision dated November 29, 2017, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed lumbar sprain and the accepted October 16, 2017 employment incident.

OWCP subsequently received physical therapy notes dated October 26 and November 29, 2017 and February 5, 2018.

In a report dated November 13, 2017, Dr. Bohl evaluated appellant for a sudden onset of lumbar pain on October 16, 2017. He noted that appellant worked as a truck driver and reported that appellant's truck suspension was inadequate and he was frequently jarred while driving. Dr. Bohl reviewed the MRI scan and performed x-rays of the thoracic and lumbar areas of the spine which revealed right thoracic scoliosis, spina bifida at L5, and mild lumbar scoliosis. He opined that the thoracic spine injury appears to have aggravated symptoms from preexisting degenerative disc disease and may have disrupted the annulus at L3-4 and L4-5 causing mild bulges with symptomatic degenerative disc disease at these levels. Dr. Bohl opined that the nature of appellant's work would aggravate his lumbar condition.

On December 11, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 22, 2018.

In reports dated December 20, 2017 to January 12, 2018, Dr. Bruce T. Cohn, a Board-certified orthopedist, diagnosed thoracic and lumbar spine sprains. Appellant reported driving a switcher truck on October 16, 2017 when he noticed his mid and lower back severely tighten. He attributed his injury to poor truck suspension which caused him to be jolted when driving. Dr. Cohn opined within a reasonable degree of medical probability that the diagnoses were causally and proximally related to the work-related injury. He noted that the mechanism of injury and the description of the incident were consistent, and it was "more likely than not" that his diagnosis was the result of the work-related injury. Dr. Cohn recommended physical therapy and acupuncture and returned appellant to a full-time sedentary position. In Form CA-17 reports dated December 20, 2017 and January 3, 2018, he continued appellant's work restrictions. In return to work notes dated December 27, 2017 and January 3, 2018, Dr. Cohn advised that appellant was disabled from December 20, 2017 to January 3, 2018 and could not drive a truck until January 31, 2018. X-rays of the lumbar spine dated December 20, 2017 revealed no acute fracture or subluxation and mild scoliosis of the lower thoracic spine.

By decision dated August 3, 2018, an OWCP hearing representative affirmed the November 29, 2017 decision.

On May 22, 2019 appellant, through counsel, requested reconsideration. In support of appellant's request, he submitted an April 23, 2019 report from Dr. Sami E. Moufawad, a Board-certified physiatrist. Appellant reported that on October 16, 2017 he was driving a switcher truck

and, after he finished hooking the trailer, he began to feel tightness and pain in his lower back and thoracic area. He further described backing the truck into a trailer, getting in and out of the truck, hooking up the trailer which weighed up to 100 pounds, and driving on a bumpy road. Dr. Moufawad noted mild scoliosis of the thoracic area. He diagnosed lumbar and thoracic sprains, substantial aggravation of preexistent thoracic and lumbosacral degenerative disc disease, and substantial aggravation of preexistent lumbar spondylosis. Dr. Moufawad concluded, to a reasonable degree of medical certainty, that appellant had underlying degenerative changes in the thoracic and lumbar areas of the spine and mild lumbar and thoracic scoliosis which made the spine less flexible. He opined that “[t]he lack of adequate suspension on the truck resulted in the forces from bumps, on the road and in the yard where he was working, to be translated directly to his spine. In this situation, because of the preexistent changes on the spine which made the spine less able to distribute the increased mechanical forces, that led to the spine structures absorbing the forces from the shocks rather than distributing it. This led to the acute injury of the tissues and reflex muscle spasms....” Dr. Moufawad further opined that the preexistent changes visible on the x-rays “made the spine more vulnerable to the injury that [appellant] was exposed to by driving a truck with lack of adequate suspension.” He pointed out that “the repeated bumps and the series of work events” aggravated his preexisting conditions and that “[t]hese events were inducing cumulative forces to the structures of the spine which were absorbing these shocks and the muscles were progressively tightening until reaching a threshold and became clinically evident and expressed with stiffness and pain and limited range of motion as detailed above.”

By decision dated July 1, 2019, OWCP denied modification of the August 3, 2018 decision dated.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including 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>4</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>5</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>6</sup>

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. There are two components involved in establishing fact of injury. First, the employee must submit

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<sup>3</sup> *Id.*

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January, 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>9</sup>

In any 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>10</sup>

### ANALYSIS

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

In his report dated April 23, 2019, Dr. Moufawad provided a proper factual and medical history of injury and opined that during the course of appellant's employment, he drove a truck with inadequate suspension which caused shocks from the bumps on the road that were translated to his spine injury. He opined that "[t]he lack of adequate suspension on the truck resulted in the forces from bumps, on the road and in the yard where he was working, to be translated directly to his spine. In this situation, because of the preexistent changes on the spine which made the spine less able to distribute the increased mechanical forces, that led to the spine structures absorbing the forces from the shocks rather than distributing it. This led to the acute injury of the tissues and reflex muscle spasms...." Dr. Moufawad further opined that the preexistent changes visible on appellant's x-rays "made the spine more vulnerable to the injury that [he] was exposed to by driving a truck with lack of adequate suspension." He pointed out that "the repeated bumps and the series of work events" aggravated his preexisting conditions and that "[t]hese events were inducing cumulative forces to the structures of the spine which were absorbing these shocks and the muscles were progressively tightening until reaching a threshold and became clinically evident and expressed with stiffness and pain and limited range of motion as detailed above."

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<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

Dr. Moufawad explained that getting in and out of the truck, hooking up the trailer which involved lifting up to 100 pounds, and driving on a bumpy road, all of which collectively aggravated his preexisting degenerative condition. He concluded that appellant sustained lumbar and thoracic sprains, substantial aggravation of preexistent thoracic and lumbosacral degenerative disc disease, and substantial aggravation of preexistent lumbar spondylosis osteoarthritis as a direct result of performing the duties associated with moving trailers while in a switcher truck.

The Board finds that the April 23, 2019 report from Dr. Moufawad is sufficient to require further development of the medical evidence. Dr. Moufawad is a Board-certified physician who 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. His report provides a pathophysiological explanation as to how the accepted employment incident resulted in diagnoses of lumbar and thoracic sprains, substantial aggravation of preexistent thoracic and lumbosacral degenerative disc disease, and substantial aggravation of preexistent lumbar spondylosis. 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.<sup>11</sup> Accordingly, Dr. Moufawad's April 23, 2019 medical opinion is sufficient to require further development of appellant's claim.<sup>12</sup>

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.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup>

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether his diagnosed lumbar and thoracic sprains, substantial aggravation of preexistent thoracic and lumbosacral degenerative disc disease, and substantial aggravation of preexistent lumbar spondylosis were causally related to or aggravated by the accepted employment incident. 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. Moufawad. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

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<sup>11</sup> *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.

<sup>12</sup> *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).

<sup>13</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>14</sup> *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).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 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.<sup>15</sup>

Issued: September 15, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>15</sup> 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. *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).