

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a back condition causally related to the accepted September 20, 2017 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 19, 2017 appellant, then a 51-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2017 she sustained a back injury when she lifted tires of all sizes out of a truck and rolled them to a contractor's trailer while in the performance of duty. She did not stop work.

In an October 5, 2017 medical note, Sean Carroll, a physician assistant, diagnosed lumbar intervertebral disc degeneration based on lumbar spine x-rays.

In an October 5, 2017 medical report, Dr. Raymond Bradley, a Board-certified orthopedic surgeon, diagnosed sciatica, lumbar intervertebral disc degeneration, and right hip trochanteric bursitis based on lumbar spine and sacrum x-rays. He ordered injections for appellant's lumbar spine and right hip.

In an October 12, 2017 medical report, Mr. Carroll again diagnosed lumbar intervertebral disc degeneration.

An October 16, 2017 electromyography (EMG) scan revealed a radiculopathic process affecting the left and right lower lumbar spinal root levels at L4/5-S1, as well as acute axonal denervation.

By decision dated November 29, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted September 20, 2017 employment incident.

³ The Board notes that, following the February 27, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁴ Docket No. 19-0140 (issued March 23, 2019).

On December 12, 2017 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

A December 4, 2017 lumbar spine magnetic resonance imaging (MRI) scan demonstrated asymmetric right-sided disc bulge at L4-5 resulting in moderate right lateral recess stenosis and impingement of the right L5 nerve root.

In a January 11, 2018 letter, Dr. Mark C. Held, a Board-certified neurosurgeon, indicated that appellant experienced an acute onset of pain while lifting a tire. Based on the MRI scan of her lumbar spine, he diagnosed right-sided paracentral disc protrusion at L4-5, minus the right L5 nerve root. Dr. Held recommended that appellant undergo L4-5 lumbar discectomy. In a February 22, 2018 letter, he indicated that she could return to work with restrictions.

By decision dated May 8, 2018, a hearing representative affirmed the November 29, 2017 decision.

On October 24, 2018 appellant appealed to the Board. By decision dated May 23, 2019, the Board affirmed OWCP's May 8, 2018 decision, finding that appellant had not met her burden of proof to establish a diagnosed condition causally related to the accepted employment incident.

On September 25, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

OWCP received a July 19, 2018 letter from Dr. Held who noted that appellant experienced increasing pain in her right lower extremity. In a September 28, 2018 letter, Dr. Held indicated that injections failed to provide her any lasting relief. In a November 13, 2018 letter, he noted that appellant sustained burns on her lower extremities since her last visit, but that her examination results were unchanged.

On November 18, 2018 Dr. Held noted that appellant experienced an acute onset of pain when she was lifting a tire at work in September 2017. He indicated that she did not have any problem prior to the accepted work incident. Dr. Held, however, noted that appellant recalled that she experienced an acute onset of left-sided low back symptoms years ago while washing her dog in the sink. He also indicated that appellant underwent no prior spine surgery.

On November 19, 2018 appellant underwent right an L4-5 spine surgery performed by Dr. Held. Dr. Held diagnosed lumbar radiculopathy and disc protrusion.

In a November 30, 2018 letter, Dr. Held noted that appellant still experienced a fair amount of pain in her lower extremity after the lumbar spine surgery. He recommended physical therapy.

Dr. Held, in a March 14, 2019 letter, indicated that appellant continued to have right lower extremity pain, but had no new numbness or weakness. He reported that she could walk with a reasonably normal gait and was able to get up on her heels and toes.

In a May 10, 2019 letter, Dr. Held noted that appellant continued to experience pain in her right buttock. He later reiterated, in an August 20, 2019 letter, that appellant experienced an acute onset of pain in her back and leg after lifting a tire at work in September 2017. Dr. Held diagnosed

a right side disc protrusion and opined that bending and lifting a tire could certainly put appellant at an increased risk to have an acute onset of lumbar issues. He further explained that flexing/bending increases pressure on the anterior lumbar disc, which would potentially increase risk for a disc extrusion/protrusion.

In a September 24, 2019 letter, Dr. Held opined that the employment incident in September 2017 probably caused appellant's lumbar disc protrusion when she was lifting an unexpectedly heavy truck tire weighing approximately 130 pounds.

Appellant, in an undated statement, reiterated her account of the accepted September 20, 2017 employment incident. She summarized the history of her medical treatment and repeated that she did not have prior injuries to her back or any part of her body while at work.

By decision dated November 4, 2019, OWCP denied modification of its prior decision.

On January 22, 2020 appellant, through counsel, requested reconsideration. Counsel argued that OWCP erroneously applied the law when it found that Dr. Held's September 24, 2019 opinion was equivocal.

By decision dated February 27, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ 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,⁶ 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.⁷ 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.⁸

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 sufficient evidence to establish that he or she actually experienced the employment incident at the

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

time and place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

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

In support of her claim, appellant has submitted a series of medical reports and opinion letters from her attending physician, Dr. Held. Dr. Held noted his review of the medical record and appellant's history of the accepted September 20, 2017 employment incident. He has provided a consistent opinion that appellant's diagnosed back condition was causally related to the accepted incident that occurred when she lifted a 130-pound tire while performing her employment duties. In an August 20, 2019 letter, Dr. Held reiterated the history of injury and diagnosed a right side disc protrusion and opined that bending and lifting of a tire was a physical act that could cause appellant's diagnosed condition. His pathophysiological explanation demonstrated how the accepted act of flexing and bending, while lifting a heavy object, increases pressure on the anterior lumbar disc, which would potentially increase risk for a disc extrusion or protrusion. In a supplemental letter dated September 24, 2019, Dr. Held again explained the mechanism of how appellant's lifting and bending while manipulating a heavy tire placed internal forces in the spine sufficient to result in disc herniations or protrusions.

Dr. Held 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 has explained that the mechanism of appellant's traumatic injury supports the diagnosis and the need for treatment which he has provided. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require OWCP to further development the medical evidence in the claim.¹²

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² See *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, *supra* note 9

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation and OWCP shares responsibility in the development of the evidence to see that justice is done.¹³

The case shall therefore be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether her diagnosed back condition is causally related to the accepted September 20, 2017 employment incident. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must explain with rationale how or why their opinion differs from that articulated by Dr. Held. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.¹⁴

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2020 and November 4, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁴ In light of the Board's disposition of issue 1, issue 2 is rendered moot.