

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted July 17, 2015 employment incident.

FACTUAL HISTORY

On July 21, 2015 appellant, then a 56-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2015 she pulled a muscle in her neck, shoulder, and head when she picked up a biscuit tray while in the performance of duty. She did not immediately stop work.

In an undated statement, appellant indicated that on July 17, 2015 she was working on the hot tray line serving breakfast when she grabbed a biscuit tray and felt burning and pain in her neck, shoulder, and head. She alerted her supervisor, but continued to work through the end of her shift.

In a duty status report (Form CA-17) dated July 23, 2015, Dr. Sara Vizcay, a Board-certified family practitioner, diagnosed cervical disc syndrome, neuritis, lumbar disc disease, and bilateral shoulder tendinitis. She advised that appellant had severe muscle spasm and decreased range of motion of the bilateral upper and lower extremities and was off work.

In a development letter dated August 4, 2015, OWCP informed appellant that additional evidence was needed to establish her claim. It advised appellant of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

In a report dated July 23, 2015, Dr. Vizcay noted that she had treated appellant for neck pain, bilateral upper extremity radiculitis, bilateral shoulder pain, and weakness, which developed on July 17, 2015 when she attempted to pull a biscuit tray from a warmer rack, which was located on a top shelf while at work. Appellant described a whiplash kind of injury when she twisted her trunk in a sudden movement. Findings on physical examination revealed tenderness of the cervical spine and both shoulders, spasm of the paraspinal and supraspinatus muscles, decreased range of motion of the shoulders, antalgic gait, and diminished sensation in the right leg and foot. Dr. Vizcay diagnosed cervical disc disease with myelopathy, bilateral upper and lower extremity radiculopathy, bilateral shoulder impingement, lumbar disc syndrome with myelopathy, and depression and anxiety secondary to chronic pain and work-related injuries. She opined that appellant's whiplash maneuver when reaching for the biscuit rack and attempting to pull a stuck tray of biscuits out of the rack caused her to twist her torso in a sudden movement and overstretch muscles, tendons, and ligaments causing her injuries. Dr. Vizcay advised that appellant was temporarily totally disabled.

On July 24, 2015 appellant underwent diagnostic testing. A magnetic resonance imaging (MRI) scan of the left shoulder revealed osteophyte from the acromioclavicular (AC) joint, tendinosis, tear of the inferior glenohumeral ligament, and tear of the posterior segment of the glenoid labrum. A cervical spine MRI scan revealed broad-based disc at C5-6 and foraminal stenosis at C3-4, C4-5, C5-6, and C6-7 on the left. A right shoulder MRI scan revealed mild degenerative change at the AC joint, possible tear or tendinosis of supraspinatus tendon, fluid in

the subacromial subdeltoid bursa, tear of the glenohumeral ligament, and anterior segment of the glenoid labarum. A lumbar spine MRI scan dated August 13, 2015 revealed bilateral disc protrusions at L3-4, broad-based disc bulge at L4-5 and L5-S1, and bilateral foraminal stenosis.

On August 19, 2015 Dr. Kevin Scott, a Board-certified orthopedist, evaluated appellant's shoulders and upper extremities. Appellant reported pulling a tray from a rack at work when she felt pain in her neck and both shoulders. Dr. Scott diagnosed cervical disc disease with myelopathy, herniated disc, bilateral upper extremity radiculopathy, bilateral shoulder ligament tear, bilateral shoulder impingement, lumbar disc syndrome with myelopathy, herniated disc, and bilateral lower extremity radiculopathy. He opined that the force and sudden movements of appellant in pulling the tray of biscuits from above her shoulders caused her to hurt both shoulders, cervical spine, and lumbar spine. In a work capacity evaluation (Form OWCP-5), Dr. Scott diagnosed cervical disc syndrome, myelopathy, bilateral shoulder and right upper extremity radiculitis. He took appellant off work for four weeks.

By decision dated September 8, 2015, OWCP found that the evidence of record failed to establish that the July 17, 2015 employment incident occurred as alleged. It noted that the mechanism of injury claimed by appellant was not consistent with that provided by Dr. Vizcay and Dr. Scott. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a Form OWCP-5c dated September 15, 2015, Dr. Vizcay noted that appellant was temporarily totally disabled. In a Form CA-17 report dated November 18, 2015, Dr. Scott also found appellant to be temporarily totally disabled.

On September 29, 2015 appellant requested reconsideration of the September 8, 2015 decision. OWCP continued to receive evidence, including physical therapy notes detailing treatment for reduction of pain in appellant's neck, shoulders, and back.

By decision dated December 9, 2015, OWCP modified the September 8, 2015 decision, finding that appellant had factually established that the incident occurred on July 17, 2015, as alleged. It determined, however, that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the accepted employment incident.

A September 30, 2016 submission revealed that on August 20, 2015 appellant underwent an electromyogram (EMG), which revealed evidence of carpal tunnel syndrome, possible cervicobrachial lesions, and ulnar neuropathy.

On December 4, 2015 appellant was treated by Dr. Jay Parekh, an osteopath and specialist in anesthesiology, for neck and shoulder pain. She reported that on July 17, 2015 she was attempting to pull a large biscuit tray off a shelf using a jerking motion and experienced pain in her neck and shoulder blades. Dr. Parekh diagnosed cervical disc disease, cervical facet joint syndrome, shoulder impingement, wrist tenosynovitis, left hand injury, anxiety, cervical disc herniation, cervicogenic headaches, and cervical spondylosis. He opined, within a reasonable degree of medical probability, that appellant suffered an injury to the cervical spine as a result of her work-related injury. Dr. Parekh recommended physical therapy and cervical facet injections.

Dr. Vizcay treated appellant on April 6, 2016 and diagnosed cervical disc syndrome with myelopathy, bilateral upper extremities radiculopathy, left and right shoulder tendinitis and

bursitis, bilateral shoulder tendon tear, and depression and anxiety secondary to chronic pain and work-related injuries. She provided her medical opinion that appellant suffered from shoulder impingement, tendinitis, and tear of soft tissue, which was caused by forceful exertion of her arm when she reached overhead to lift and pull out a stuck industrial food tub filled with biscuits on July 17, 2015. Dr. Vizcay further opined that the sudden hyperflexion and hyperextension and sudden backward and forward maneuver caused the injuries to the neck and body consistent with bulging, protrusion, and herniation in the vertebrae as a result of the work injury on July 17, 2015.

On May 9, 2016 Dr. Bhanatkumar D. Patel, a Board-certified neurologist, treated appellant for chronic neck pain and low back pain. Appellant reported having to forcefully pull an industrial food tub filled with biscuits that was located above her shoulders. Dr. Patel opined that, after reviewing a picture of a rack tray, reading witness statements, diagnostic studies, and medical reports, the sudden movement and back and forth in trying to pull the stuck food tub caused a whiplash-type injury to appellant's cervical spine. He further noted that the sudden twisting of her trunk to avoid dropping the food tub caused her lumbar condition.

Appellant requested reconsideration on July 27, 2016. OWCP continued to receive evidence, including an August 29, 2016 reexamination report from Dr. Vizcay where she noted that appellant continued to have neck, shoulder, and back pain. Dr. Vizcay opined that appellant was totally temporarily disabled.

By decision dated October 5, 2016, OWCP again modified its September 8, 2015 decision, finding that the evidence of record failed to establish that the employment incident occurred on July 17, 2015, as alleged. It noted that the mechanism of injury claimed by appellant was not consistent with that provided by Drs. Vizcay, Scott, Patel, and Parekh.

In a statement dated July 17, 2015, J.R., appellant's coworker, noted that appellant reported injuring her neck and shoulder while pulling out a pan from a warmer on the top shelf. In a statement dated August 12, 2015, J.D., another coworker, noted that on July 17, 2015 she walked by appellant who informed her that she injured her shoulders and neck while she was taking out biscuits.

OWCP received an incident report which noted that on July 17, 2015 appellant was in the canteen and while reaching over to get a tray she sprained her neck. It was noted that appellant provided several versions of the incident and did not immediately report the incident to her supervisor.

Appellant received physical therapy treatment from December 29, 2016 to June 14, 2017.

On March 10, 2017 Dr. Vizcay continued to treat appellant for injuries sustained at work on July 17, 2015.

In an appeal request form dated September 13, 2017, received by OWCP on September 19, 2017, appellant, through counsel, requested reconsideration of the October 5, 2016 decision.

By decision dated December 20, 2017, OWCP modified the October 5, 2016 decision, finding that appellant had factually established that the incident occurred as alleged on July 17, 2015. It determined, however, that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the accepted employment incident.

On December 20, 2018 appellant requested reconsideration. She submitted an October 14, 2015 report from Dr. Scott who evaluated appellant's bilateral shoulders and upper extremity. Dr. Scott diagnosed cervical disc disease with myelopathy, herniated disc, bilateral upper extremity radiculopathy, bilateral shoulder ligament tear, bilateral shoulder impingement, lumbar disc syndrome with myelopathy, herniated disc, and bilateral lower extremity radiculopathy and advised that appellant was totally disabled.

By decision dated March 20, 2019, OWCP denied modification of the decision dated December 20, 2017.

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 period 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 if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹¹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *Id.*

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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).

⁶ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S., supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.¹²

ANALYSIS

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

In her report dated July 23, 2015, Dr. Vizcay opined that appellant's whiplash maneuver, when reaching for the biscuit rack and attempting to pull a stuck tray of biscuits out of the rack, on the date of injury caused her to twist her torso in a sudden movement and overstretch muscles, tendons, and ligaments resulting in her diagnosed conditions. Similarly, on April 6, 2016 Dr. Vizcay further opined that the sudden hyperflexion and hyperextension and sudden backward and forward maneuver caused the injuries to the neck and body consistent with bulging, protrusion, and herniation in the vertebrae as a result of the work injury on July 17, 2015.

The Board finds that the July 23, 2015 and April 6, 2016 reports from Dr. Vizcay, are sufficient to require further development of the medical evidence. Dr. Vizcay provided an understanding of the medical record and case history. Her reports indicates a pathophysiological explanation as to how appellant, by pulling a tray of biscuits from above her shoulders in a sudden movement resulted in a diagnosis of a shoulder, neck, and/or head injuries. 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 which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Accordingly, Dr. Vizcay's medical opinions are therefore, sufficient to require further development of appellant's claim.¹⁴

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.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall 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 conditions of shoulder, neck, and/or head injuries were causally related to or aggravated by the accepted July 17, 2015 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must

¹² *Id.*

¹³ *D.S.*, Docket No. 20-1060 (issued December 22, 2020); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹⁴ *J.H.*, *supra* 5; *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).

¹⁵ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ *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).

explain with rationale how or why the opinion differs from the opinions of Dr. Vizcay. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 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: March 25, 2021
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