



## ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On September 19, 2019 appellant, then a 50-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained pain and spasms in his middle and lower back area due to factors of his federal employment. He alleged that he repetitively bent over, sorted through hampers, and lifted/moved around parcels within the hamper. Appellant indicated that he became (what -- aware)of the condition and of its relationship to his federal employment on September 17, 2019. He was last exposed to the conditions alleged to have caused his condition on September 20, 2019.

Appellant submitted additional statements dated September 17 and 19, 2019 wherein he described his federal employment duties. In his September 19, 2019 statement, he also indicated that he had sustained a prior back injury on July 26, 2018 while moving/holding a large parcel. Appellant noted that OWCP had assigned that claim OWCP File No. xxxxxx536 and that the prior claim was denied.

In a September 25, 2019 report, Dr. Kouros K. Shamlou, a Board-certified orthopedic surgeon, reported that appellant had previously injured his back in July of the previous year and that his pain increased while working on September 17, 2019 when he performed activities requiring bending and twisting to move objects. He provided lumbar spine examination findings, noting pain with motion and moderate restrictions with flexion, extension and lateral bending. Dr. Shamlou noted that appellant's x-rays showed mild spondylosis with no spondylolisthesis and he ordered a magnetic resonance imaging (MRI) scan. He provided an assessment of lumbar spondylosis with radiculopathy.

In an October 2, 2019 development letter, OWCP informed appellant that additional evidence was required to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received appellant's October 5, 2019 response to its questionnaire and a November 15, 2019 statement.

In an October 16, 2019 report, Dr. Shamlou related appellant's examination findings and provided a diagnosis of lumbar spondylosis with radiculopathy. He indicated that appellant's October 10, 2019 lumbar MRI scan showed spondylosis at L4-5 with central protrusion, facet arthropathy and foraminal narrowing.

Appellant's October 10, 2019 MRI scan of the lumbar spine interpreted by Dr. Panayota Roumanis, a Board-certified diagnostic radiologist, revealed posterior disc bulges and protrusions

at L3-L4, L4-L5, and L5-S1 resulting in mild bilateral neural foraminal stenosis at those levels with grade 1 retrolisthesis of L4 on L5.

By decision dated December 27, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed back conditions and his accepted employment duties.

On February 10, 2020 appellant requested reconsideration.

In a January 3, 2020 report, Dr. Judith Kraft, a Board-certified family practitioner, reported that appellant had a prior back injury in July 2018 for which he had been treated until September 2018. She noted that he had sustained a right rib fracture in June 2019, following which he had been placed on work restrictions. Dr. Kraft noted that appellant cased his own route and from May to August 2019 he was casing multiple routes, which required frequent bending, twisting, and remaining partially bent forward over hampers. Since August 2019, appellant had been working two to four hours a day. Dr. Kraft also discussed appellant's regular duties as a letter carrier prior to receiving work restrictions. She noted the history of his current injury and her review of medical records and diagnostic studies, which included an October 10, 2019 MRI scan of the lumbar spine, a July 28, 2018 MRI scan of the lumbar spine, an August 18, 2018 computerized tomography (CT) scan, a November 22, 2019 lower extremity electromyography (EMG) and nerve conduction velocity (NCV) study, and December 9, 2019 electrodiagnostic studies of the upper and lower extremities. Dr. Kraft diagnosed cumulative trauma with aggravation of lumbar discogenic disease, cumulative trauma aggravation of right radiculopathy, and cumulative trauma with lumbar spondylosis/spondylolisthesis. She explained that the repetitive biomechanical impact loading and of being in an almost consistently weight-bearing position throughout the workday further weakened the intervertebral discs outer layer and extended the disc beyond its previous position and pushed it further into areas of its surrounding environment such as the neural foramina and produced pain for appellant. Dr. Kraft noted that, while degenerative changes are a normal event from aging, the aging of appellant's lumbar axial skeletal system spondylosis had been aggravated by the repetitive physical activities he performed for the employing establishment. She indicated that appellant's lumbar spine was transformed by these degenerative changes and became progressively less suited to absorb the forces of his work activities without creating symptoms. Dr. Kraft indicated that the repetitive nature of appellant's impact-loading work duties caused the progression of his lumbar spine degenerative disc disease, noting that appellant denied any other history of injury that may have contributed to his condition. She concluded that his employment factors contributed to the acceleration of his condition of degenerative disc disease and radiculopathy along with the development of spondylolisthesis in a

cumulative fashion, as previously described. Dr. Kraft released appellant to modified duties on January 3, 2020 with additional limitations and restrictions.

November 22, 2019 electrodiagnostic studies of appellant's lower extremities, interpreted by Dr. Omar Mora Colon, a physiatrist, revealed no electrodiagnostic evidence of nerve entrapment and/or radiculopathy of the lower extremities.

In an April 10, 2020 form report, Dr. Kraft listed appellant's work restrictions.

By decision dated May 8, 2020, OWCP denied modification of its prior 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, 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>3</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>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>6</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion 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 incident.<sup>7</sup>

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<sup>3</sup> See *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

<sup>4</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).

<sup>5</sup> *K.F.*, Docket No. 20-0100 (issued June 2, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

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>8</sup>

### ANALYSIS -- ISSUE 1

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

In support of his claim, appellant provided a January 3, 2020 report from Dr. Kraft, who diagnosed cumulative trauma with aggravation of lumbar discogenic disease, cumulative trauma aggravation of right radiculopathy, and cumulative trauma with lumbar spondylosis/spondylolisthesis. Dr. Kraft opined that the repetitive nature of appellant's impact loading work duties caused the progression of his lumbar spine degenerative disc disease. She specifically explained that the repetitive biomechanical impact loading and of being in an almost consistently weight-bearing position throughout the workday further weakened appellant's intervertebral discs outer layer and extended the disc beyond its previous position and pushed it further into areas of its surrounding environment such as the neural foramina and produced pain for appellant. Dr. Kraft also noted that, while degenerative changes were a normal event from aging, the aging of appellant's lumbar axial skeletal system spondylosis had been aggravated by the repetitive physical activities he performed for the employing establishment. She indicated that appellant's lumbar spine was transformed by these degenerative changes and became progressively less suited to absorb the forces of his work activities.

The Board finds that, although Dr. Kraft's report is insufficient to fully discharge appellant's burden of proof that his diagnosed conditions were accelerated, caused, or aggravated by the accepted factors of his federal employment, her report constitutes substantial, uncontradicted evidence in support of his claim, and provide sufficient rationale to require further development of the case record by OWCP. Dr. Kraft provided a detailed history of injury, referenced physical examination findings, expressed her opinion on causal relationship, and provided an explanation as to the mechanism by which appellant's employment factors caused or aggravated his diagnosed conditions.<sup>9</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>10</sup>

The case will therefore be remanded to OWCP for further development of the medical evidence on the issue of causal relationship, including the preparation of a statement of accepted facts which shall set forth all of appellant's accepted employment duties and then make a referral to a medical specialist in the appropriate field of medicine for consideration of the entire medical

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<sup>8</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).

<sup>9</sup> *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *J.D.*, Docket No. 18-0270 (issued January 6, 2020).

<sup>10</sup> *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

record. 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. Kraft. 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 May 8, 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: May 11, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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