

**United States Department of Labor  
Employees' Compensation Appeals Board**

P.C., Appellant	)	
	)	
and	)	Docket No. 22-0428
	)	Issued: July 22, 2022
U.S. POSTAL SERVICE, JENKS POST	)	
OFFICE, Jenks, OK, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 28, 2022 appellant, through counsel, filed a timely appeal from a January 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted September 13, 2018 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 18, 2018 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 13, 2018, she lost her footing and fell to the ground on her left knee and elbow when delivering a package while in the performance of duty. She noted that she suffered an abrasion of the right knee and that her hip and back began hurting after the fall. On the reverse side of the claim form, the employing establishment controverted appellant's claim, noting that she had complained of hip and back pain in the past and there was no evidence that the fall actually occurred. Appellant did not stop work.

OWCP received a series of medical reports in support of appellant's claim. In a September 18, 2018, Dr. Mark Stephen Wilson, a specialist in pain medicine, noted appellant's history of injury and diagnosed acute traumatic injury resulting in lumbosacral disc displacement with radiculopathy. He opined that her condition was causally related to the accepted September 13, 2018 employment incident.

By decision dated November 27, 2018, OWCP denied appellant's traumatic injury claim, finding that, while the September 13, 2018 employment incident occurred as alleged, the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted employment incident.

On January 31, 2019 appellant requested reconsideration and submitted additional evidence in support of her request.

By decision dated April 29, 2019, OWCP denied modification of the November 27, 2018 decision.

On October 28, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence in support of her request.

By decision dated January 24, 2020, OWCP denied modification of the April 29, 2019 decision.

On March 9, 2020 appellant, through counsel, appealed to the Board. By decision dated November 23, 2020, the Board affirmed OWCP's January 24, 2020 decision finding that appellant

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<sup>3</sup> Docket No. 20-0855 (issued November 23, 2020).

did not meet her burden of proof to establish a medical condition causally related to the accepted September 13, 2018 employment incident.<sup>4</sup>

OWCP subsequently received a report dated September 8, 2020, from Dr. Nicholas Keith Thompson, an osteopath Board-certified in family and sports medicine. Dr. Thompson noted that appellant had experienced left hip pain since September 13, 2018 when she fell while delivering a package. He diagnosed lumbar radiculopathy, lumbar degenerative disc disease, and left hip osteoarthritis.

OWCP also received supplemental reports from Dr. Wilson. In a report dated February 9, 2021, Dr. Wilson noted appellant's history regarding her alleged September 13, 2018 employment injury. He reviewed her diagnostic studies, and examination findings and thereafter diagnosed lumbosacral intervertebral disc disorders with L3-4, L4-5, L5-S1 radiculopathy, and L4 on L5 spondylolisthesis, which he attributed to her September 13, 2018 slip and fall accident. Dr. Wilson explained that slip and falls, such as falling down two steps experienced by appellant, was known to be a common cause of spinal injuries. He further explained that the impact from a fall causes intervertebral discs to become compressed, damaged, or slip out of place. According to Dr. Wilson, the actual event, forces involved, and impact, determine the actual seriousness of an injury.

Dr. Wilson, in a June 15, 2021 report, diagnosed with L3-4, L4-5, and L5-S1 radiculopathy, lumbosacral radiculopathy, L4 on L5 spondylolisthesis, left hip bursitis, left hip chondromalacia, and left hip muscle, fascia, and tendon injury. He reiterated his opinion regarding the cause of appellant's lumbosacral injury. Dr. Wilson further added that appellant sustained an injury to her hip based on her MRI scan, which demonstrated tearing and injury of the muscle, fascia, and tendon.

On August 11 and October 6, 2021 appellant, through counsel, filed requests for reconsideration.

By decision dated January 4, 2022, OWCP denied modification. It found that the newly submitted medical evidence was conclusory and lacked any medical rationale.

### **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,<sup>5</sup> 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

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<sup>4</sup> *Id.*

<sup>5</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>6</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>7</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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</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>10</sup>

### ANALYSIS

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

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's January 24, 2020 decision, which was considered by the Board in its November 23, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>11</sup>

In his February 9 and June 15, 2021 reports, Dr. Wilson also clarified reports previously submitted and considered, regarding appellant's lumbosacral condition. He reviewed appellant's diagnostic studies, and examination findings and thereafter diagnosed intervertebral disc disorders with L3-4, L4-5, and L5-S1 radiculopathy, lumbosacral radiculopathy, and L4 on L5 spondylolisthesis, which he attributed to the accepted September 13, 2018 incident. Dr. Wilson explained that slip and falls, such as falling down two steps experienced by appellant, was known

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<sup>6</sup> *L.L.*, Docket No. 21-0991 (issued February 9, 2022); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

<sup>8</sup> *L.L.*, *supra* note 6; *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>9</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>10</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>11</sup> *L.L.*, *supra* note 6; *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

to be a common cause of spinal injuries. He further explained that the impact from such falls cause intervertebral discs to become compressed, damaged, or slip out of place with the seriousness of the injury determined by the forces involved, impact, and the actual event.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.<sup>12</sup>

The Board finds that, while Dr. Wilson's February 9, and June 15, 2021 reports are not fully rationalized, they raise an uncontroverted inference that appellant's lumbar conditions were causally related to the accepted September 13, 2018 employment incident.<sup>13</sup> Although the reports are insufficient to meet appellant's burden of proof to establish her claim, they are sufficient to require OWCP to further develop the medical evidence.<sup>14</sup>

The case shall, therefore, be remanded for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed lumbar conditions. If the physician opines that the diagnosed conditions are not causally related to the accepted September 13, 2018 employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Wilson. Following 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.

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<sup>12</sup> See *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *C.R.*, Docket No. 20-0366 (issued December 11, 2020); *John J. Carlone, supra* note 8; *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>13</sup> *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2022 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: July 22, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board