

² The Board notes that, while this appeal was pending, OWCP issued a December 20, 2021 decision, which denied modification of the April 1, 2021 merit decision. OWCP may not simultaneously have jurisdiction over the same issue. Consequently, the December 20, 2021 decision is set aside as null and void. See 20 C.F.R. § 10.626; see also A.C., Docket No. 18-1730 (issued July 23, 2019); M.C., Docket No. 18-1278, n.1 (issued March 7, 2019); Russell E. Lerman, 43 ECAB 770 (1992); Douglas E. Billings, 41 ECAB 880 (1990).

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional back conditions as causally related to the accepted May 29, 2020 employment injury.

FACTUAL HISTORY

On June 5, 2020 appellant, then a 51-year-old postal collection and delivery clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 29, 2020 he injured his right hip/buttocks when he slipped in the back of his truck while retrieving a parcel in the performance of duty. He stopped work on the date of injury.

In a June 1, 2020 report, Anne Weisser-Maimone, a nurse practitioner, examined appellant and diagnosed right hip joint pain.

In a development letter dated June 9, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant provided additional factual and medical evidence in response to the development letter. In May 29 and June 29, 2020 statements, he asserted that he slipped off of the back of his mail truck while retrieving heavy parcel, landing awkwardly on his leg. Appellant experienced pain in his right hip and buttocks.

On May 29, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16), which noted right hip injury. Dr. Arash Yadegar, a pain medicine specialist, completed the reverse of this form on July 6, 2020 and diagnosed low back pain.

In a June 1, 2020 note, Ms. Weisser-Maimone found appellant totally disabled.

In a June 3, 2020 medical report, Dr. Joseph Cardinale, Board-certified in pain medicine, reported that appellant injured his right hip and buttocks at work when lifting a heavy package out of his mail truck. He performed a physical examination and diagnosed lumbosacral radiculopathy, right hip joint pain, and acute low back pain without sciatica.

On June 17, 2020 appellant underwent a magnetic resonance imaging (MRI) scan of the right hip, which demonstrated tearing of the superior and anterior labrum at the right hip with chondral loss, mild bone spurs, mild synovitis, and slight effusion without acute fracture or malalignment, mild proximal right hamstring insertional tearing without retraction or atrophy, mild bilateral distal gluteal tendinopathy, and greater trochanteric bursitis. A lumbar spine MRI scan of even date revealed multilevel degenerative disease with large right foraminal extrusion resulting in impingement and displacement of the right exiting L3 nerve root at L3-4, left paracentral/foraminal herniation impinging the left L5 and left exiting L4 nerve roots at L4-5. It also demonstrated progression of multilevel disc pathology most severe on the right at L3-4 and on the left at L4-5.

In a July 6, 2020 duty status report (Form CA-17), Dr. Yadegar diagnosed lumbosacral radiculopathy and low back pain and indicated that appellant was unable to work.

By decision dated July 14, 2020, OWCP denied appellant's traumatic injury claim, finding that he had not established the factual component of his claim. It concluded, therefore, the requirements had not been met to establish an injury as defined by FECA.

On July 30, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on October 5, 2020.

OWCP continued to receive medical evidence. On June 1, 2020 appellant underwent right hip x-rays which did not demonstrate acute fracture or dislocation.

In a July 2, 2020 report, Dr. Yadegar noted that appellant was not working due to his injury. He conducted a physical examination and diagnosed lumbosacral radiculopathy and low back pain.

In a September 17, 2020 report, Dr. Yadegar described appellant's employment incident and diagnosed large right foraminal extrusion resulting in impingement and displacement of the right exiting L3 nerve root at L3-4 and a left paracentral herniation impinging on the nerve roots at L4-5. He further found progression of multilevel disc pathology at L3-4 and L4-5. Dr. Yadegar opined that his findings were as a direct result of appellant's May 19, 2020 fall. He noted that his preinjury December 21, 2017 MRI scan of the lumbar spine only showed disc desiccation and disc bulges at L1-5.

By decision dated December 16, 2020, OWCP's hearing representative modified the July 14, 2020 decision, finding that the incident occurred as alleged. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 29, 2020 employment incident.

On February 3, 2021 appellant, through his then-representative, requested reconsideration. He provided a January 21, 2021 narrative report from Dr. Yadegar who explained that the spine is comprised of vertebrae that are separated by intervertebral discs, which serve as shock absorbers and provide stability and flexibility to the spine. Dr. Yadegar noted that these discs are susceptible to breakage when traumatic stress causes movement of the spine. He opined that, when appellant hit the pavement with his right foot, the stress was transferred to his lumbar spine and disc herniation occurred, which caused the gelatinous material inside the disc to contact the nerves in the lumbar spine, resulting in impingement, and radiculopathy in the right lower extremity.

By decision dated April 1, 2021, OWCP accepted appellant's claim for lumbosacral radiculopathy (pinched nerve). By separate decision of even date, it denied expansion of the acceptance of the claim to include multilevel disc disease and bulges.

LEGAL PRECEDENT

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³

To establish causal relationship, the employee must submit rationalized medical opinion evidence.⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

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

In a September 17, 2020 narrative report, Dr. Yadegar diagnosed lumbosacral radiculopathy and low back, and noted that the MRI scan revealed a large right foraminal extrusion resulting in impingement and displacement of the right exiting L3 nerve root at L3-4 as well as disc herniation impinging on the left L5 and left exiting L4 nerve roots at L4-5. He further noted that there was also progression of multilevel disc pathology. Dr. Yadegar opined that these findings were causally related to appellant's May 29, 2020 employment injury, as the previous December 21, 2017 MRI scan of the lumbar spine only showed disc desiccation and disc bulges at L1-5. In his January 21, 2021 narrative report, he explained that intervertebral discs serve as shock absorbers and provide stability and flexibility to the spine. Dr. Yadegar opined that when appellant hit the pavement with his right foot the stress was transferred to his lumbar spine and disc herniation occurred, which caused the gelatinous material inside the disc to contact the nerves in the lumbar spine, resulting in impingement, and radiculopathy in the right lower extremity.

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

³ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *R.H.*, Docket No. 21-0493 (issued March 4, 2022); *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

⁵ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *R.H.*, *supra* note 4; *C.L.*, 20-0213 (issued September 15, 2021); *J.L.*, Docket No. 20-0717 (issued October 15, 2020); *James Mack*, 43 ECAB 321 (1991).

responsibility in the development of the evidence.⁷ OWCP has an obligation to see that justice is done.⁸

Dr. Yadegar rendered an opinion on the issue of causal relationship, provided a pathophysiological explanation of the mechanism of the injury, and demonstrated a comprehensive understanding of the medical record and case history. Therefore, while Dr. Yadegar's reports are insufficiently rationalized to establish causal relationship, they are sufficient to require further development of the medical evidence regarding expansion of the acceptance of the claim to include additional conditions.⁹

As such, the case must be remanded to OWCP for further development. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether the additional diagnosed conditions are causally related to the accepted May 29, 2020 employment injury. If the physician opines that the additional diagnosed conditions are not causally related to the employment injury, he or she must explain, with rationale, how or why their opinion differs from that of Dr. Yadegar. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

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

⁷ See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

⁸ *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).

⁹ *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).

¹⁰ 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); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2021 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: June 21, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

A handwritten signature in black ink, appearing to read "J. D. McGinley", written in a cursive style.

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