

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a condition causally related to the accepted March 14, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 17, 2014 appellant, then a 41-year-old technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2014 he developed a possible back strain due to lifting heavy objects while in the performance of duty. He stopped work on March 18, 2014.

By decision dated July 9, 2014, OWCP denied appellant's traumatic injury claim, finding that the factual evidence was insufficient to establish that the March 14, 2014 incident occurred as alleged. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On July 10, 2014 appellant provided additional factual evidence and explained that on March 14, 2014 he was directed to install printers, three of which weighed over 75 pounds each, and had to be unpacked from boxes. He noted that, while unpacking and lifting the heavy printers, he felt that he had pulled something in his back. After the initial pull, appellant's back pain increased and continued to worsen after he went home.

Appellant submitted reports dated from Dr. Boqing Chen, a Board-certified physiatrist, describing the alleged March 14, 2014 employment incident of moving printers at work and diagnosing radicular low back pain from lumbar radiculopathy and low back pain. Dr. Chen concluded that the conditions likely resulted from discogenic pain or facet joint pain or sprain/strain. He opined that there was causal relationship between appellant's acute onset back pain and the heavy lifting that he performed on March 14, 2014.

Appellant requested a review of the written record from a representative of OWCP's Branch of Hearings and Review on August 6, 2014.

By decision dated February 4, 2015, an OWCP hearing representative affirmed, as modified, OWCP's July 9, 2014 decision, finding that the evidence was sufficient to establish that the March 14, 2014 incident occurred as alleged. However, the claim remained denied as the medical evidence of record did not establish causal relationship between the diagnosed condition and the accepted March 14, 2014 employment incident.

Counsel requested reconsideration on January 25, 2016 and submitted additional notes from Dr. Chen in which he provided a description of appellant's work incident and diagnosed low back pain, radiculopathy of the thoracolumbar region, spondylosis with radiculopathy in the

³ Docket No. 16-1786 (issued January 30, 2017).

lumbar region, cervicocranial syndrome, spondylosis with radiculopathy in the cervical region, and cervicalgia. He opined that appellant experienced a work-related injury.

By decision dated May 19, 2016, OWCP denied modification of the February 4, 2015 decision.

Appellant, through counsel, appealed to the Board. By decision dated January 30, 2017,⁴ the Board affirmed the May 19, 2016 OWCP decision, finding that the medical evidence was insufficiently rationalized to establish causal relationship between his accepted March 14, 2014 employment incident and his diagnosed conditions.

On August 28, 2017 appellant, through counsel, requested reconsideration. In an August 19, 2017 report, Dr. Chen noted his history of injury and diagnosed cervical radiculopathy, lumbar radiculopathy, low back pain, and thoracic back pain. He opined that there was a causal relationship between appellant's acute onset back pain and his March 14, 2014 heavy lifting.

By decision dated June 6, 2019, OWCP denied modification of its prior decision.

On May 22, 2020 appellant, through counsel, requested reconsideration. In a May 21, 2020 report, Dr. Chen found that appellant had developed or aggravated low back pain after he performed heavy lifting at work on March 14, 2014. He noted that heavy lifting was a risk factor for low back pain and that appellant lifted more than 75 pounds. Dr. Chen opined that the repetitive heavy lifting with his low back bent at an angle placed thousands of pounds of weight on appellant's low back, which was why he had developed a low back injury and aggravated his low back pain on March 14, 2014 at work.

By decision dated August 17, 2020, OWCP denied modification of its prior decision.

On August 13, 2021 appellant, through counsel, requested reconsideration. In an August 11, 2021 report, Dr. Chen asserted that appellant repetitively lifted more than 75 pounds at work on March 14, 2014 and that this repetitive heavy lifting with his low back bent at an angle placed thousands of pounds of weight in his low back. He found that biomechanically heavy lifting with the lumbar spine in a standing and forward bent position could significantly increase intradiscal pressure and result in or aggravate lumbar disc herniation leading to discogenic low back pain. Dr. Chen concluded that it was his medical opinion that appellant had sustained a low back injury and aggravated low back pain on March 14, 2014 due to his employment incident.

By decision dated October 21, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

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

⁴ *Id.*

⁵ *Supra* note 2.

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. 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.⁹

The medical evidence required to establish a 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

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

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence submitted prior to OWCP's May 19, 2016 decision, because the Board considered that evidence in its January 30, 2017 decision, finding that it was insufficient to establish his claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

⁶ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *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).

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 *K.V.*, Docket No. 21-0008 (issued November 15, 2021); *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

On reconsideration appellant submitted an August 11, 2021 report from Dr. Chen describing the March 14, 2014 employment incident in which appellant repetitively lifted more than 75 pounds at work and explaining that this repetitive heavy lifting with his low back bent at an angle placed thousands of pounds of weight on his low back. Dr. Chen explained that biomechanically, heavy lifting with the lumbar spine in a standing and forward bent position could significantly increase intradiscal pressure and result in or aggravate lumbar disc herniation leading to discogenic low back pain. He concluded that appellant sustained a low back injury and aggravated low back pain on March 14, 2014 due to his employment incident.

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.¹³

The Board finds that, while Dr. Chen's August 11, 2021 report is not fully rationalized, it raises an uncontroverted inference that appellant has a lumbar disc herniation leading to discogenic low back pain causally related to the accepted March 14, 2014 employment incident.¹⁴ Although the report is insufficient to meet appellant's burden of proof to establish his claim, it is sufficient to require OWCP to further develop the medical evidence.¹⁵

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 conditions.¹⁶ If the physician opines that the diagnosed conditions are not causally related to the accepted March 14, 2014 employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Chen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹³ *C.B.*, *supra* note 6; *C.R.*, Docket No. 20-1102 (issued January 8, 2021); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

¹⁴ *See B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

¹⁵ *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 9; *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁶ *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 21, 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 29, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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