

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted October 30, 2020 employment incident.

FACTUAL HISTORY

On December 2, 2020 appellant, then a 64-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2020 she strained her right knee when she tripped over a package while in the performance of duty. She did not stop work.

In an undated statement, appellant related that she overextended her knee when she tripped and caught her foot on a panel while carrying mail flats. She indicated that she developed right hip and leg pain as a result of the alleged incident.

A return-to-work note dated November 17, 2020 from Dr. Adam Stefaniak, a Board-certified orthopedist, held appellant off work November 17 through 25, 2020.

A Family and Medical Leave Act medical form dated December 2, 2020 was completed by Dr. Hina Humeera, a Board-certified family medicine specialist. Dr. Humeera related that on October 30, 2020 appellant tripped over a package while carrying mail, which caused lower back pain radiating down into her leg. She also noted that she had a history of radiculopathy of the right leg.

In a duty status report (Form CA-17) dated December 23, 2020, Dr. Humeera provided a description of injury that on October 30, 2020 appellant tripped and injured her knee, hip, and leg. She repeated her earlier medical findings and diagnoses.

On December 24, 2020 the employing establishment controverted appellant's claim, contending that she did not submit medical evidence sufficient to establish a diagnosed condition causally related to the alleged employment incident.

A Form CA-17 from Dr. Humeera dated December 30, 2020 reiterated the alleged mechanism of injury on October 30, 2020. Dr. Humeera noted that appellant's lower back pain was radiating down appellant's leg and that her right knee pain caused weakness and difficulty walking. She diagnosed lumbosacral radiculopathy and right knee pain.

In a development letter dated January 19, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A Form CA-17 dated January 11, 2021 from Dr. Paula Kilmer, a Board-certified physiatrist, related that appellant was experiencing weakness in the right leg. Dr. Kilmer diagnosed lumbar radiculopathy and indicated that she was to undergo a magnetic resonance imaging (MRI) scan. In a return-to-work note of even date, she held appellant off work from January 11 through February 11, 2021.

In a diagnostic report dated February 2, 2021, Dr. Charles Swallow, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine, which revealed multilevel lumbar spondylosis with spinal and foraminal stenosis, right foraminal disc extrusion, and an associated hemorrhage. In a medical report of even date, he reiterated his findings from the MRI scan.

A February 9, 2021 medical report from Dr. Kilmer noted that an MRI scan revealed spondylolisthesis of the lumbar region and lumbosacral radiculopathy.

In a medical report dated February 17, 2021, Dr. Alain Fabi, a Board-certified neurosurgeon, reviewed appellant's physical examinations and medical history. He diagnosed lumbar spondylosis and osteoporosis without a pathological fracture. In a Form CA-17 of even date, Dr. Fabi reiterated his clinical findings and also diagnosed lumbar radiculopathy.

By decision dated February 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish medical conditions causally related to the accepted October 30, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On January 11, 2021 appellant was seen by Dr. Kilmer, who related that on October 30, 2020 appellant tripped and fell over a package, which caused her to develop back pain. She noted that appellant received physical therapy, but that it did not significantly improve radicular pain and numbness that had developed in the lower leg. Dr. Kilmer indicated that x-rays revealed underlying radiculopathy and spondylosis. She opined that the October 30, 2020 employment incident aggravated appellant's underlying lumbar conditions.

In a diagnostic report dated February 17, 2021, Dr. Alexander Serra, a Board-certified radiologist, performed an x-ray of appellant's lumbar spine, which revealed mild spondylosis and bilateral degenerative facet arthrosis. In a medical report of even date he additionally diagnosed lumbosacral radiculopathy.

A diagnostic report dated March 11, 2021 from Dr. Roman Hyszcak, a Board-certified radiologist, noted that an x-ray of appellant's lumbar spine revealed lumbosacral radiculopathy.

On April 8, 2021 appellant requested reconsideration of OWCP's February 25, 2021 decision.

OWCP received additional evidence. In a Form CA-17 dated April 20, 2021, Dr. Fabi reiterated his previous diagnoses and medical findings. In a report of even date, he noted that appellant's x-rays revealed a posterior fusion at L4-5, but reported that her lateral alignment was unchanged. In a diagnostic report also dated April 20, 2021, Dr. Robert Zick, a Board-certified radiologist, noted that there were no unexpected postoperative findings.

On June 2, 2021 appellant was seen by Dr. Zick for a follow-up appointment. Dr. Zick noted a stable lateral alignment.

In a return to work note dated June 8, 2021, Dr. Fabi released appellant to work on July 12, 2021. By decision dated July 7, 2021, OWCP denied modification of its February 25, 2021 decision.

OWCP subsequently received a diagnostic report dated June 2, 2021, from Dr. Zick who indicated that appellant's postoperative lumbar spine was stable.

On August 17, 2021 appellant appealed OWCP's July 7, 2021 decision to the Board. In a November 1, 2021 letter, counsel requested dismissal of the appeal to the Board³ and requested reconsideration of this decision before OWCP.

In an October 26, 2021 narrative report, Dr. Sami Moufawad, a Board-certified physiatrist conducted an audio visual visit from which he recounted appellant's medical history as given, and conducted a physical examination. He related that on October 30, 2020 she sustained a knee sprain when she tripped over a stack of mail while her view was blocked. In the process of breaking the fall, appellant lifted her back upwards, which caused her right knee to extend backwards. Dr. Moufawad explained that the mechanism of injury was a sudden pull of the knee ligaments and the forceful movement of falling forward, which resulted in a hyperextension of the knee. He indicated that, after the incident, appellant's pain began to radiate down to her right lower limb and lumbar region, causing numbness in the right lower back, buttocks, and right thigh. Dr. Moufawad opined that her lumbar conditions were also caused or aggravated by falling forward. As appellant prevented the fall, her spine thrust backwards, contracting the muscles at high speed, squeezing the vertebra together, and eventually increasing pressure in the intervertebral disc. Dr. Moufawad explained that this impacted her ability to stand, walk, and lift heavy objects. He opined that this increased sudden pressure and appellant attempt to pull herself up from falling injured multiple lumbar spinal structures and aggravated a preexisting dehydrated disc, which caused the disc protrusion that led to her right radiculopathy condition. Dr. Moufawad noted that the pressure also impacted a dehydrated disc, which aggravated her preexisting anterolisthesis by decreasing the height and reducing the walls of the discs, and, therefore, decreasing support for the vertebra. He diagnosed a right knee sprain, aggravation of anterolisthesis, disc protrusion, and right lumbar radiculopathy.

By decision dated January 27, 2022, OWCP denied modification of its July 7, 2021 decision, finding that Dr. Moufawad's October 26, 2021 narrative report did not create an inference of causal relationship. It concluded that appellant had not established that her right knee and lumbar spine conditions were causally related to the accepted October 30, 2020 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ 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 limitation

³ *Order Dismissing Appeal*, Docket No. 21-1247 (issued November 29, 2021).

⁴ *Supra* note 2.

of FECA,⁵ 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.⁶ 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.⁷

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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.¹⁰

ANALYSIS

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

In his October 26, 2021 narrative report, Dr. Moufawad conducted an audio visual visit from which he recounted appellant's medical history as given, conducted a physical examination and diagnosed a right knee sprain, aggravation of anterolisthesis, disc protrusion, and right lumbar radiculopathy. He opined that the accepted October 30, 2020 employment incident caused appellant's right knee sprain when she tripped over a stack of mail while her view was blocked. Dr. Moufawad explained that the mechanism of injury, a hyperextension of the knee, was caused by a sudden pull and undue pressure on the right knee ligaments in conjunction with the forceful

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

movement of falling over. He further opined that both radiated pain from the incident's impact and the process of falling forward contributed to or aggravated her diagnosed lumbar conditions. Dr. Moufawad explained that the process of falling forward thrust her spine backwards. This resulted in the lumbar spine muscles to contract at high speed and squeeze the vertebra together, eventually building pressure in the intervertebral disc. He found that this pressure impacted a preexisting dehydrated disc, which then aggravated the preexisting anterolisthesis by reducing support for the vertebra. Dr. Moufawad also concluded that the pressure in the intervertebral disc caused a degenerative disc protrusion, which contributed to right radiculopathy, as x-rays following the employment incident revealed nerve roots pushing past the degenerative disc.

The Board finds that Dr. Moufawad provided an affirmative opinion on causal relationship. Further, Dr. Moufawad's opinion is based upon a complete factual history from the appellant and medical background.¹¹ While his report is not completely rationalized to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between her diagnosed medical conditions and the accepted employment incident and, therefore, is sufficient to require OWCP to further develop the medical evidence and the case record.¹²

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹³ It has an obligation to see that justice is done.¹⁴

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts (SOAF) and the medical evidence of record to a specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that, the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Moufawad. Following this and any further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

¹¹ *E.P.*, Docket No. 20-0898 (issued February 17, 2021); *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

¹² *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018). *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹³ *Id.*

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 27, 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: June 27, 2022
Washington, DC

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

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

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, sweeping initial "J".

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