

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

M.M., Appellant)	
)	
and)	Docket No. 22-0637
)	Issued: November 30, 2022
DEPARTMENT OF THE NAVY, NAVAL)	
SUPPORT SYSTEMS COMMAND,)	
Point Mugu, CA, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Brett E. Blumstein, Esq., for the appellant¹</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 25, 2022 appellant, through counsel, filed a timely appeal from a December 13, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 17, 2020 appellant, then a 61-year-old wood worker, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2020 he triggered his sciatica while loading boxes onto a shipping truck while in the performance of duty. He explained that the boxes weighed from 80 to 130 pounds. Appellant reported that the pain was prominent on the right side of his body starting from the lumbar area and down the right hamstring. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty and noted that he had aggravated a preexisting condition. Appellant stopped work on August 17, 2020 and returned to work on August 31, 2020.

In a September 30, 2020 development letter, OWCP advised appellant of the deficiencies of his claim. It explained the type of additional evidence needed and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

In an August 18, 2020 emergency department report, Dr. Richard R. Rutherford, a Board-certified emergency and family medicine specialist, related that appellant had right-sided low back pain radiating to the right hip, progressively worsening over the past three weeks. Appellant reported that he was a wood worker and often had to lift objects weighing up to 100 pounds and had continued to do his work until that day, when his pain was so severe that he sought emergency care. Dr. Rutherford's examination revealed point tenderness to the right gluteal region with palpable spasm and antalgic gait secondary to pain. He opined that appellant's symptoms had likely been exacerbated by continuing to lift heavy objects at work and noted that he suspected a musculoskeletal etiology of pain. Dr. Rutherford diagnosed acute low back pain and advised appellant to monitor his symptoms and return to the emergency department for sustained pain or worsening symptoms.

In an August 26, 2020 emergency department report, Dr. Martin Ehrlich, a Board-certified emergency medicine specialist, related that appellant presented with right-sided buttocks and groin pain and had a history of sciatica with similar symptoms. Appellant reported that his pain was greatest when laying down and standing and that he had difficulty with ambulation due to leg weakness. He also reported that his pain started after repetitive heavy lifting and a twisting injury while at work. Dr. Ehrlich's examination revealed tenderness to palpation in the right sacroiliac joint and buttocks, inability to ambulate due to pain and subjective weakness in the right lower extremity, and decreased sensation along the right lateral leg in an L5 distribution. He reviewed x-rays of chest, lumbar spine, and right hip and pelvis and noted that appellant had mild dextrocurvature scoliosis of the lumbar spine with degenerative changes and moderate degenerative changes in the hips bilaterally. Dr. Ehrlich noted concern that, given the three weeks of progressing symptoms, appellant may have a nerve impingement. He also expressed concern regarding appellant's dyspnea on exertion and lower extremity swelling. Dr. Ehrlich noted that appellant's laboratory work was unremarkable and his chest x-ray was negative. He diagnosed low back pain, lumbar radiculopathy, and leg weakness.

By decision dated October 30, 2020, OWCP denied appellant's traumatic injury claim, finding the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted August 13, 2020 employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

In an August 27, 2020 emergency department report, Dr. Zadok Sacks, Board-certified in internal medicine, related that appellant had right low back and hip pain that started suddenly while moving a heavy box at work two weeks prior and that the pain progressed until appellant was unable to walk. Appellant, however, reported being pain-free with a lidocaine patch on his right thigh. Dr. Sacks reviewed a lumbar spine magnetic resonance imaging (MRI) scan taken that day, which demonstrated multilevel posterior epidural lipomatosis throughout the lumbar spine resulting in multilevel spinal canal stenosis with compression of the thecal sac at contiguous disc levels from L2-S1, multilevel mild degenerative disc disease and facet joint arthritis greatest at L5-S1 where there is grade 1 degenerative anterolisthesis, and L5-S1 moderate central canal stenosis and severe right and moderate left intervertebral foraminal stenosis due to uncovering of a bulging disc by grade 1 anterolisthesis and moderate-to-severe bilateral facet joint arthritis as well as posterior epidural lipomatosis. He indicated that appellant's condition could be due to an L2-L3 radiculopathy pattern or a pelvic nerve entrapment syndrome. Dr. Sack's examination revealed pain at the right hip on passive flexion. He diagnosed right low back and hip pain, as well as likely muscle strain and underlying degenerative disease of hip joint, central canal stenosis, moderate-to-severe facet joint arthritis, and compression of thecal sac from multilevel posterior epidural lipomatosis.

On October 20, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In an October 13, 2021 report, Dr. John W. Ellis, a Board-certified family medicine specialist, evaluated appellant and reviewed his August 2020 medical records and diagnostic reports. He explained that on August 13, 2020 appellant picked up a box weighing upwards of 10 pounds off the floor at work and twisted to the right before placing it down on the processing table. When appellant twisted, he experienced "an abrupt electricity-like, sharp sensation that radiated from his lower back down to his right buttocks and leg followed by the onset of acute lower back pain." Dr. Ellis described appellant's progressing symptoms and noted that they had worsened as he continued working. Appellant reported no previous injuries to his back or legs other than the occasional back strains of working as a carpenter and wood worker. Dr. Ellis diagnosed spinal stenosis of the lumbar region, intervertebral disc disorder with radiculopathy of the lumbar region, and traumatic arthropathy of the right hip. He recommended that appellant undergo physical therapy and advised activity restrictions, including no lifting, pushing, or pulling more than 10 pounds, pending further evaluation. Dr. Ellis explained that appellant's acute trauma in his back on August 13, 2020 precipitated his underlying moderate-to-severe multilevel degenerative disc disease with disc desiccations throughout the lumbar spine and significant central canal stenosis, resulting in radiculopathy symptoms. He noted that, after appellant initially took time off work following the acute injury, his continuing employment activities, such as minor lifting, bending, climbing ladders, and twisting, restrained appellant's back and "led to further aggravation of previous underlying injuries." Dr. Ellis further explained that appellant's federal employment required prolonged repetitive motions and heavy lifting, which causes undue pressure and trauma to occur within the muscles, tendons, and ligaments of the back causing further debilitating pain[,] which causes further aggravation of his intervertebral disc injuries resulting in the compression of the nerves due to the disc bulging and disc desiccation, as well as further contributes to his central canal stenosis. He described that appellant's degenerative disc disease of the lumbar spine is a condition in which the discs between each vertebra in the lumbar spinal column, which provide shock absorbency and vertical lift, deteriorate over time. This deterioration causes lower back pain and narrowing of the spinal column. Dr. Ellis concluded that appellant's bending and twisting

movement on August 13, 2020 led to a bulging of a lumbar disc, which precipitated radiating nerve pain into the right lower extremity. He opined with reasonable medical certainty that, based on his examination of appellant, his review of appellant's medical records, and his medical experience, appellant's conditions "arose out of and are the direct result of [appellant's] continued work[-]related activities following the initial acute trauma resulting in subsequent consequential injuries."

In a November 19, 2021 statement, the employing establishment controverted the claim, asserting that appellant's symptoms could have been caused by preexisting conditions and that his symptoms seemed to have resolved as he had not sought medical care after August 27, 2020.

By decision dated December 13, 2021, OWCP modified the October 30, 2020 decision to find that the medical evidence of record established a medical diagnosis; however, the claim remained denied as the medical evidence of record was insufficient to establish how appellant's diagnosed condition was causally related to the accepted August 13, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

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 and can be established only by medical evidence.⁷

³ *Supra* note 2.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *P.B.*, Docket No. 20-1643 (issued March 30, 2022); *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).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

ANALYSIS

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

In a report dated October 13, 2021, Dr. Ellis reviewed the medical evidence and indicated that appellant had initially sustained an acute injury on August 13, 2020 lifting a box at work and twisting, and he felt immediate pain in his low back radiating down to his right buttock and leg. After some time off work, appellant continued performing his employment duties and his symptoms worsened. Dr. Ellis diagnosed spinal stenosis of the lumbar region, intervertebral disc disorder with radiculopathy of the lumbar region, and traumatic arthropathy of the right hip. He explained that appellant's federal employment required prolonged repetitive motions and heavy lifting which causes undue pressure and trauma to occur within the muscles, tendons, and ligaments of the back causing further debilitating pain[,] which causes further aggravation of his intervertebral disc injuries resulting in the compression of the nerves due to the disc bulging and disc desiccation, as well as further contributes to his central canal stenosis. Dr. Ellis opined that the initial August 13, 2020 injury from bending and twisting resulted in a bulging of a lumbar disc, which precipitated radiating nerve pain into the right lower extremity. He further found that appellant's continuing employment activities, such as minor lifting, bending, climbing ladders, and twisting, restrained appellant's back and "led to further aggravation of previous underlying injuries."

The Board finds that Dr. Ellis' report, while not fully rationalized, is sufficient to require further development of the medical evidence as it provides a pathophysiological explanation as to how the accepted August 13, 2020 employment incident caused or contributed to his diagnosed condition.

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 responsibility in the development of the evidence.¹⁰ OWCP has an obligation to see that justice is done.¹¹

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ *Id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹¹ See *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).

Accordingly, the Board finds that Dr. Ellis' medical opinion is sufficient to require further development of appellant's claim.¹² On remand OWCP shall refer appellant, along with the case record and the statement of accepted facts, to a specialist in the appropriate field of medicine, for a reasoned opinion regarding whether he sustained a low back condition causally related to the accepted employment factors. If the referral physician disagrees with the opinion of Dr. Ellis, he or she must provide a fully-rationalized explanation of why the accepted employment factors were insufficient to have caused or contributed to appellant's medical condition. 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 December 13, 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: November 30, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹² See *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).