

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

M.L., Appellant)	
)	
and)	Docket No. 22-0808
)	Issued: October 25, 2022
U.S. POSTAL SERVICE, CARMEL)	
MOUNTAIN POSTAL STORE POST OFFICE,)	
San Diego, CA, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 13, 2022 appellant filed a timely appeal from a January 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 lumbar condition causally related to the accepted April 20, 2021 employment incident.

FACTUAL HISTORY

On May 25, 2021 appellant, then a 36-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2021, he sustained a slipped L5 lumbar disc

¹ 5 U.S.C. § 8101 *et seq.*

when he entered and seated himself in a postal vehicle while in the performance of duty. He stopped work on April 20, 2021.

In a development letter dated June 2, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A duty status report (Form CA-17) dated June 16, 2021, containing an illegible signature, noted appellant's work restrictions.

By decision dated July 8, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted April 20, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

On August 4, 2021 appellant requested reconsideration and submitted additional medical evidence.

In a report dated June 1, 2021, Dr. Basimah Khulusi, Board-certified in physical medicine and rehabilitation, related that she had examined appellant for complaints of lower back pain. She described appellant's history of injury. On physical examination, Dr. Khulusi observed slow and guarded transitional movements with a non-antalgic gait. Range of motion demonstrated forward flexion to 45 degrees aggravating left lower lumbar pain. Dr. Khulusi diagnosed left sacroiliac joint sprain and lumbar sprain. She opined that appellant suffered a traumatic injury at work when he contorted his body to enter a space too small for his size, resulting in back and sacroiliac joint sprain, resulting in a displacement of a lumbar disc, causing radicular symptoms.

A magnetic resonance imaging (MRI) scan of appellant's lumbar spine obtained on June 10, 2021 demonstrated mild bilateral neuroforaminal stenosis at L2-3; mild-to-moderate spinal canal stenosis, mild bilateral articular recess stenosis, and moderate bilateral neuroforaminal stenosis at L4-5; and severe spinal canal stenosis, severe bilateral subarticular recess stenosis, and moderate right/severe left neuroforaminal stenosis.

An electromyogram/nerve conduction velocity (EMG/NCV) study obtained on July 8, 2021 demonstrated multi-root radiculopathy affecting left L4-5 and S1, and right L5-S1.

In a report dated August 3, 2021, Dr. Khulusi related that she had examined appellant for complaints of low back pain radiating into the left hip. She described the duties of appellant's federal employment and history of injury. On physical examination, Dr. Khulusi noted that his transitional movements were slightly antalgic and range of motion of the back with forward flexion of 45 degrees aggravating pain. She reviewed diagnostic studies and diagnosed lumbar sprain, resultant lumbar disc displacement, and resultant lumbar radiculopathies. Dr. Khulusi opined, "On [April 20, 2021, appellant] was put out to deliver mail.[...] The [employing establishment] rented a van.[...] The proportions of the van were too small for [appellant's] size. The entry to the van through the door was too narrow for his body. He did grab the handle to get into the van and had to contort his body and twist it to be able to go from outside the van to place his body into the seat.

When [standing] outside the van on the ground, the top of the seat [came] up to about the level of half of his chest. So, when he was contorting his body to get into the small seat, he did end up twisting his low back and lifting the weight of his body to be able to place himself into the seat, causing excessive loading pressures on the lumbar spine area and in particular on the intradiscal spaces in the lumbar spine area. That ended up causing more displacement of the discs in his low back, with the worst displacement happening at the L5-S1 level causing crowding of the space for the nerve roots and in particular causing severe left neural foraminal stenosis. That translated into pinching of the nerve roots as per the results of the EMG study that show that he had the worst radiculopathies at the bilateral L5-S1 levels worse on the left and at the left L4-5 level which coincides with [appellant's] symptoms. Because of what I explained above, his injury has been caused by the activities on the job.”

By decision dated October 29, 2021, OWCP denied modification of its July 8, 2021 decision.

On January 4, 2022 appellant requested reconsideration. In support thereof, he submitted a December 27, 2021 report wherein Dr. Khulusi reiterated the explanation she provided in her August 3, 2021 report. Dr. Khulusi further explained how appellant's body was placed at a mechanical disadvantage when trying to fit his frame into a too-small space. She explained that appellant loaded his lumbar spine area with excessive loading forces and pressures that ended up causing sprain and displacement of the discs of the lumbar spine. Dr. Khulusi supplied the definition of a sprain and explained that in appellant's case, the spraining of the ligaments of his low back had resulted in enough weakness of the ligaments, together with increased pressure on the intradiscal space, which led to displacement of the discs, worst at L5-S1, resulting in lumbar radiculopathy. She diagnosed lumbar sprain, resultant lumbar disc displacement, and resultant lumbar radiculopathy.

By decision dated January 11, 2022, OWCP denied modification of its October 29, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 of FECA,³ 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

² *Id.*

³ *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).

employment injury.⁴ 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.⁵

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 whether the employee 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.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

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

In a report dated August 3, 2021, following review of appellant's diagnostic studies, Dr. Khulusi diagnosed lumbar sprain, resultant lumbar disc displacement, and resultant lumbar radiculopathies. She opined, "On [April 20, 2021, appellant] was put out to deliver mail.[...] The [employing establishment] rented a van.[...] The proportions of the van were too small for [appellant's] size. The entry to the van through the door was too narrow for his body. He did grab the handle to get into the van and had to contort his body and twist it to be able to go from outside the van to place his body into the seat. When [standing] outside the van on the ground, the top of the seat [came] up to about the level of half of his chest. So, when he was contorting his body to get into the small seat, he did end up twisting his low back and lifting the weight of his body to be able to place himself into the seat, causing excessive loading pressures on the lumbar spine area and in particular on the intradiscal spaces in the lumbar spine area. That ended up causing more displacement of the discs in his low back, with the worst displacement happening at the L5-S1 level causing crowding of the space for the nerve roots and in particular causing severe left neural

⁴ *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).

⁵ *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).

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).

⁷ *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).

⁸ *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).

foraminal stenosis. That translated into pinching of the nerve roots as per the results of the EMG study that show that he had the worst radiculopathies at the bilateral L5-S1 levels worse on the left and at the left L4-L5 level which coincides with [appellant's] symptoms. Because of what I explained above, his injury has been caused by the activities on the job.”

In a December 27, 2021 report, Dr. Khulusi explained how appellant's body was placed at a mechanical disadvantage when trying to fit his frame into a too-small space. She explained that appellant loaded his lumbar spine area with excessive loading forces and pressures that ended up causing sprain and displacement of the discs of the lumbar spine. Dr. Khulusi further explained that in appellant's case, the spraining of the ligaments of his low back had resulted in enough weakness of the ligaments, together with increased pressure on the intradiscal space, which led to displacement of the discs, worst at L5-S1, resulting in lumbar radiculopathy. She diagnosed lumbar sprain, resultant lumbar disc displacement, and resultant lumbar radiculopathy.

The Board finds that these reports of Dr. Khulusi are sufficient to require further development of the medical evidence. Dr. Khulusi provided a pathophysiological explanation of how the accepted employment incident caused appellant's diagnosed conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.⁹ Although the August 3, and December 27, 2021 reports are insufficient to meet appellant's burden of proof to establish the claim, they are sufficient to require OWCP to further develop the claim.¹⁰

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.¹¹ It has an obligation to see that justice is done.¹²

On remand, OWCP shall refer appellant, along with the case record and a statement of accepted facts, to a specialist in the appropriate field of medicine for a rationalized opinion on whether appellant's diagnosed lumbar conditions are causally related to or aggravated by 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 their opinion differs from that of Dr. Khulusi. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

⁹ *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹⁰ *See E.G.*, Docket No. 19-1296 (issued December 19, 2019).

¹¹ *Id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹² *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *see B.C.*, Docket No. 15-1853 (issued January 19, 2016); *John J. Carlone*, 41 ECAB 354 (1989).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 11, 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: October 25, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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