United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 22-0430**
	)	**Issued: September 26, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Waukegan, IL, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 28, 2022 appellant, through counsel, filed a timely appeal from an August 5, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted August 23, 2018 employment incident.

FACTUAL HISTORY

On August 27, 2018 appellant, then a 62-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2018 she injured her low back when a car struck the rear of her mail truck while in the performance of duty.[3]

In a September 11, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received an August 28, 2018 report from Dr. Pessoolal S. Chhabria, a Board-certified neurologist. Dr. Chhabria related appellant's August 23, 2018 injury history, noting that appellant had no symptoms until the following day and that she had not worked since August 24, 2018. He diagnosed lumbar radiculopathy and found that appellant was unable to return to work.

In duty status report (Form CA-17) dated August 28, 2018, Dr. Chhabria noted that on August 23, 2018 appellant injured her low back when her vehicle was rear ended. Physical examination findings included lumbosacral tenderness on palpation, bilateral paraspinal muscle spasm, and positive bilateral straight left raising. Dr. Chhabria diagnosed lumbar radiculopathy, which he attributed to the injury, and found appellant totally disabled.

In a September 4, 2018 disability certificate, Dr. Chhabria found appellant totally disabled for the period September 4 to 10, 2018. He, in a September 17, 2018 return to work note, released appellant to return to work on September 20, 2018, with no lifting over 30 to 40 pounds.

OWCP received a September 28, 2018 report from Dr. Chhabria wherein he related that appellant's physical examination findings included lumbosacral tenderness on palpation and bilateral paraspinal muscle spasms. Dr. Chhabria diagnosed lumbago and lumbar radiculopathy. In a disability certificate of even date, he certified that appellant had been totally disabled from September 28 to October 5, 2018. In a Form CA-17 also dated September 28, 2018, Dr. Chhabria noted that she had back pain radiating to her right leg. He diagnosed lumbar radiculopathy and noted appellant's work restrictions.

By decision dated October 18, 2018, OWCP denied appellant's claim. It accepted that the August 23, 2018 incident occurred as alleged and that, a lumbar condition had been diagnosed, however, it denied her claim finding that she had failed to establish causal relationship between the accepted employment incident and the diagnosed condition.

[3] The record reflects that on June 12, 2015 appellant sustained a lumbar strain during an automobile accident, which was accepted under OWCP File No. xxxxxx926.

OWCP received a copy of an August 23, 2018 police report relating to appellant's accident, and her response to questions posed by OWCP.

On November 13, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received an October 19, 2018 report from Dr. Chhabria which was repetitive of prior reports. Dr. Chhabria diagnosed lumbago and lumbar radiculopathy.

In a November 5, 2018 report, Dr. Chhabria noted that appellant was seen for a work-related automobile accident and noted, active problems of lumbar herniated intervertebral disc, lumbar radiculopathy, and lumbago. Physical examination findings were unchanged. A review of appellant's magnetic resonance imaging (MRI) scan demonstrated progression of lumbar L5-S1 disc herniation. Under assessment Dr. Chhabria reported obesity, lumbago, lumbar canal stenosis, and lumbar radiculopathy. He found appellant disabled from work.

By decision dated March 25, 2019, OWCP's hearing representative affirmed the October 18, 2018 decision.

On March 5, 2020 appellant, through counsel, requested reconsideration and submitted a November 22, 2019 report from Dr. Chhabria and MRI scans dated November 11, 2016 and October 29, 2018.

Appellant's November 11, 2016 MRI scan revealed mild L5 nerve root compression, L4-5 left foraminal disc protrusion, advanced left L4-5 degenerative facet arthropathy with acute inflammatory component, multilevel degenerative disc and facet changes without significant foraminal or canal stenosis, and moderate right concave lumbar scoliosis.

Appellant's October 29, 2018 MRI scan showed multilevel lumbar degenerative disc disease, L4-5 left lateral osteophyte formation and marked disc bulging, severe vertebral canal stenosis, severe left L4-5 foraminal stenosis, moderate right L4-5 foraminal stenosis, moderate L5-S1 vertebral canal stenosis, moderate L5-S1 foraminal and right foraminal stenosis, moderately severe L3-4 vertebral canal stenosis, and moderate left L4-5 foraminal stenosis.

Dr. Chhabria, in his November 22, 2019 report, related that he had treated appellant since August 16, 2016 for low back pain radiating into both legs from a June 12, 2015 work-related automobile accident. He noted that she returned to her regular work without restrictions on December 2, 2016. Dr. Chhabria further related that appellant was involved in another work-related automobile accident on August 23, 2018 which caused severe lower back pain radiating into her legs. A review of MRI scan demonstrated L5-S1 herniated disc, which he found consistent with her symptoms. Dr. Chhabria diagnosed L5-S1 disc herniation, lumbar radiculopathy, and lumbago. He attributed appellant's L5-S1 disc herniation to the accepted August 23, 2018 work incident. In support of this conclusion, Dr. Chhabria explained that pressure was placed on the spinal disc by the sudden jarring of the spine and forward/backward motion causing nucleus pulposus pushed through and creating a L5-S1 hearing disc. Additionally, he explained that appellant developed radiculopathy due to inflammation, swelling of the tissues, and pressure on the nerve caused by the lateral herniation. Dr. Chhabria reported that her injury was new as no L5-S1 herniated disc was seen on the 2016 MRI scan.

By decision dated June 1, 2020, OWCP denied modification.

On May 17, 2021 appellant through counsel, requested reconsideration and submitted an October 8, 2020 report from Dr. Chhabria in support of her request.

Dr. Chhabria, in an October 8, 2020 report, summarized appellant's medical history beginning in 2003 when she was treated for low back pain and radicular leg symptoms and continuing. Based on his review of the records, her history of injury, and examination findings, he opined that the August 23, 2018 incident aggravated her degenerative disc disease, aggravated her lumbar canal stenosis, and caused the diagnosed lumbago and lumbar radiculopathy. Dr. Chhabria explained that these conditions were caused by the sudden jerking of appellant's body forward and backward in the automobile. Specifically, he explained that spinal stenosis is a narrowing of the spinal spaces which places pressure on nerves traveling throughout the spine. The abrupt jerking from the impart of the vehicle caused substantial torque on appellant's back which aggravated her spinal stenosis and L5-S1 disc herniation. According to Dr. Chhabria, the aggravation of her spinal stenosis resulted in lower back spinal inflammation which led to lower back spinal nerve compression, bulging disc aggravation, low back pain, and leg weakness. In concluding, he opined that the L5-S1 aggravated disc, lumbar radiculopathy, aggravated degenerative disc disease, and aggravated spinal stenosis were a direct and natural consequence flowing from appellant's mail truck being rear ended while at a traffic stop. Furthermore, the diagnosed conditions were not a natural progression or degenerative in nature, but were aggravated by the traumatic August 23, 2018 work injury. Dr. Chhabria explained the difference between a natural progression of lumbar degenerative disease, which is slowly progressive, and appellant's condition, which was a sudden onset and the tiny tears caused by the traumatic incident.

By decision dated August 5, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[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]

[4] *Supra* note 2.

[5] *A.C.*, Docket No. 21-1307 (issued March 22, 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).

[6] *A.C., id.*; *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] *A.C., id.*; *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).

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.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 the specific employment incident identified by the claimant.[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

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

In support of her claim, appellant submitted multiple reports from her treating physician, Dr. Chhabria. In his November 22, 2019 and October 8, 2020 narrative reports, Dr. Chhabria discussed appellant's medical and injury histories, reviewed diagnostic reports, and provided findings on physical examination. He indicated that her latest MRI scan was consistent with her symptoms and showed that her degenerative disc disease had been aggravated by her work duties. Dr. Chhabria opined, based on the history of injury, MRI scans, and physical examination findings, that she sustained an aggravation of her conditions from the accepted August 23, 2018 employment incident. He noted that he had treated appellant following her work-related June 12, 2015 employment injury, which was accepted for lumbar sprain, and he further opined that her lumbar radiculopathy, L5-S1 herniated disc, aggravation of lumbar stenosis and aggravation of degenerative disc disease were caused by the sudden jarring when her vehicle was rear ended on August 23, 2018. Dr. Chhabria concluded that abrupt body jerking from the rear ending of her

[8] *G.R.*, Docket No. 21-1195 (issued March 17, 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).

[9] *A.C.*, *supra* note 5; *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] *G.R.*, *supra* note 8; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *A.C.*, *supra* note 5; *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

vehicle resulted in substantial torque or stress on her back causing inflammation of the spine resulting in spinal cord compression of the lower back spinal nerve. The Board finds that Dr. Chhabria's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the evidence.[12]

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] OWCP has an obligation to see that justice is done.[14]

On remand, OWCP shall combine OWCP File No. xxxxxx926 with the present case file.[15] It shall thereafter 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 diagnosed conditions are causally related to the accepted August 23, 2018 employment incident. If the physician opines that the diagnosed conditions are not causally related to the accepted employment incident, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Chhabria. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

CONCLUSION

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

[12] *A.G.*, Docket No. 21-0656 (issued February 16, 2022); *A.D.*, Docket No. 21-0143 (issued November 15, 2021); *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018). *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[13] *A.G.*, *id*.; *A.D.*, *id*.; *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] *A.G.*, *id*.; *J.N.*, Docket No. 20-1287 (issued October 26, 2021); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[15] OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. *Supra* note 11 at Chapter 2.400.8c (February 2000). For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. *Id*.; *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 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: September 26, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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