

FACTUAL HISTORY

On November 10, 2020 appellant, then a 53-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2020 she injured her lower back and right arm while in the performance of duty. She explained that she was assisting a noncompliant geriatric patient ambulate from the bed to a chair and to the restroom for the past two days and that she had to lift the patient's legs, weighing approximately 100 pounds, into a bed. Appellant stopped work on November 2, 2020.

In a November 4, 2020 medical note, Dr. Rodney Wishnow, Board-certified in occupational medicine, held appellant off work from November 4 through 18, 2020.

In a November 12, 2020 e-mail, appellant indicated that she accidentally listed the wrong month on her Form CA-1 and that her employment injury actually occurred on November 2, 2020. She also explained that her injury was caused by lifting her patient's legs into the bed excessively.

Appellant submitted an illegible November 16, 2020 medical form signed by Dr. James Schmidt, Board-certified in family medicine.

In a November 17, 2020 duty status report (Form CA-17), Dr. Schmidt diagnosed back strain and checked a box marked "No" to indicate that appellant was unable to return to work.

In medical notes dated November 4 and 30, 2020, Dr. Schmidt held appellant off work from November 4, 2020 through January 4, 2021.

Appellant submitted physical therapy notes, containing illegible signatures, dated from December 3 to 17, 2020 for treatment from November 23 through December 17, 2020.

In a December 29, 2020 medical note, Dr. Schmidt continued to hold appellant off work from January 4 through February 4, 2021.

In a January 20, 2021 development letter, OWCP informed appellant of the deficiencies of her claim and provided a questionnaire for her completion. It advised her of the type of factual and medical evidence necessary to establish her claim. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In a November 2, 2020 e-mail, A.C., appellant's coworker, related that appellant was injured helping a patient and that she went to the emergency room to be evaluated.

In a November 5, 2020 diagnostic report, Dr. Farzad Rezai, a Board-certified radiologist, performed an x-ray scan of appellant's lumbar spine, observing degenerative disc changes at all lumbar levels and par defects at L5 with mild grade one anterolisthesis of L5 on S1. A separate diagnostic report of even date revealed that he performed an x-ray scan of her right arm, noting no displaced fracture, bone destruction or arthritis.

In a February 1, 2021 medical note and prescription form, Dr. Schmidt released appellant to work on February 9, 2021 with light-duty assignments.

In a statement received by OWCP on February 17, 2021, the employing establishment agreed that appellant was injured during work while she was assigned to a restless patient who was noncompliant and agitated. It explained that the patient was obese and unsteady with her balance; therefore, appellant had to constantly assist the patient from the bed to the chair. The employing establishment explained that the patient was unable to lift her feet and when she attempted to get up from a chair she put their entire weight on appellant, injuring appellant. The employing establishment also attached a position description for a nursing assistant.

In response to OWCP's questionnaire, appellant submitted a February 22, 2021 statement where she explained that on the night of November 2, 2020 she had already been with her patient for the two days prior. She described the patient as noncompliant, noting that she refused to wear her oxygen mask and continuously moved around the room from her bed to a chair. Appellant estimated that the patient's legs weighed approximately 75 to 100 pounds and that she weighed nearly 300 pounds more than her. She related that she had to move the patient without the assistance of any medical equipment. On the night of the incident, appellant and another nurse were assisting the patient ambulate to the bathroom and asserted that the patient could not hold her own body weight.

By decision dated March 5, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed lumbar condition and the November 2, 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 the fact 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,⁴ 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.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 must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he or she actually experienced the

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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. Chidden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Elliott*, 41 ECAB 992 (1990).

⁷ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

employment incident at the time and place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

To establish causal relationship between the condition and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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.¹¹

ANALYSIS

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

Appellant filed a Form CA-1 alleging a November 2, 2020 traumatic injury arising from her employment duties that day involving assisting a noncompliant geriatric patient ambulate from her bed to a chair and to the restroom over a two-day period prior to the November 2, 2020 employment incident. Additionally, in her February 2, 2021 response to OWCP's development questionnaire, she again explained that she had been assigned to care for the same patient for the two nights prior to the accepted employment incident as well as the night of November 2, 2020. Appellant described the patient as weighing over 300 pounds more than her and noted that she did not have the assistance of a medical device when moving the patient. The Board therefore finds that she indicated a traumatic injury by filing a Form CA-1, but described an occupational disease.¹² Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.¹³ It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.¹⁴ OWCP's procedures provide that if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, it should convert the claim to the proper type of claim and notify the claimant and employing establishment (and any representative, if

⁸ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

¹⁰ *See F.C.*, Docket No. 19-0594 (issued August 13, 2019); *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹¹ *See F.C.*, *id.*; *I.J.*, 59 ECAB 408 (2008).

¹² A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹³ *See G.S.*, Docket No. 16-0908 (issued October 26, 2017); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

¹⁴ *Id.*

applicable) of the conversion.¹⁵ Appellant's claim and subsequent statements relate circumstances of an occupational disease rather than a traumatic injury.

On remand OWCP shall properly adjudicate the claim as an occupational disease claim. After this and any other 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 March 5, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: April 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011). *S.N.*, Docket No. 12-1814 (issued March 11, 2013).