

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

D.W., Appellant	)	
	)	
and	)	<b>Docket No. 23-0533</b>
	)	<b>Issued: December 11, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>FAIRFIELD VA CLINIC C, TRAVIS AIR</b>	)	
<b>FORCE BASE, CA, Employer</b>	)	
	)	

*Appearances:*  
Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>  
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 March 9, 2023 appellant, through counsel, filed a timely appeal from a September 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 3, 2018 employment incident.

## FACTUAL HISTORY

On April 16, 2018 appellant, then a 48-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2018 she sustained injury to her right buttock, lower back, and right shoulder in the course of emptying supplies out of a box onto a cart when her chair slipped from under her and rolled backwards, causing her to hit the floor while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted work status reports dated April 9 through May 11, 2018 from her treating physician, Dr. Phillip L. Wagner, a physiatrist and occupational and family medicine specialist, who placed her off work.

In a May 22, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

Following OWCP's development letter, appellant submitted medical reports, diagnostic studies, and work status notes dated April 3 through June 14, 2018 in support of her traumatic injury claim. She also responded to OWCP's questionnaire on June 4, 2018, discussing the details surrounding her claimed traumatic injury.

In an April 3, 2018 hospital report, Dr. Joyce C. Arpilleda, an emergency medicine specialist, indicated that appellant was evaluated in the emergency department after she had fallen to the ground from her chair, hitting her lower back and buttocks. She diagnosed right upper quadrant abdominal tenderness, back pain, and "fall off furniture." In a June 4, 2018 attending physician's report (Form CA-20), Dr. Wagner noted a diagnosis and findings of lumbar and thoracic disc herniations.

By decision dated June 26, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted April 3, 2018 employment incident.

On July 25, 2018 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated November 30, 2018, OWCP's hearing representative affirmed OWCP's June 26, 2018 decision.

On September 25, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated December 19, 2019, OWCP denied modification of the November 30, 2018 decision.

On May 13, 2020 appellant, through counsel, requested reconsideration of the December 19, 2019 decision and submitted additional medical evidence.

By decision dated August 6, 2020, OWCP denied modification of the December 19, 2019 decision.

On August 6, 2021 appellant, through counsel, requested reconsideration. In support of her claim, she submitted an August 4, 2021 medical report from Dr. Michael Hebrard, a Board-certified physiatrist.

In his August 4, 2021 report, Dr. Hebrard evaluated appellant for an initial consultation pertaining to an April 3, 2018 injury at work when a wheeled chair rolled out from under her causing her to fall backward, and hit her lower and upper back and buttocks area. He further discussed appellant's medical history and provided findings on physical examination. Dr. Hebrard diagnosed lumbar radiculopathy, impingement and aggravation of right shoulder osteoarthritis, chronic instability of left knee due to meniscus tear, and chronic pain syndrome. He discussed a preexisting right shoulder injury from a motor vehicle accident resulting in a diagnosis of acromioclavicular (AC) joint osteoarthritis. Dr. Hebrard reported that the work-related trauma caused a shearing force across the AC joint, resulting in inflammation and flaring of the osteoarthritis, consistent with appellant's experienced stiffness and weakness. He also explained that the backwards fall caused axial loading with hyperextension that compressed the intervertebral discs of the thoracic and lumbosacral spine areas, causing posterior migration of those discs, which compressed adjacent nerve endings, as evidenced by appellant's lower extremity weakness. Dr. Hebrard noted that the weakness, coupled with sensory changes in the lower extremity, pointed to a permanent injury and aggravation of underlying thoracic and lumbosacral spine conditions, as reflected by appellant's lumbar radiculopathy. He also noted a preexisting left knee meniscus tear resulting in gait instability and overuse of the right knee, which he related to long-term postural changes resulting from appellant's back injury. Dr. Hebrard opined that by direct trauma, appellant's right shoulder and thoracic and lumbosacral spine were injured in the course of her employment when she fell from her chair on April 3, 2018. He further opined that appellant has since developed chronic pain syndrome due to the unresolved work-related conditions. Dr. Hebrard discussed medication management and reported that appellant was totally disabled as a result of her injuries.

By decision dated October 26, 2021, OWCP denied modification of the August 6, 2020 decision.

On September 16, 2022 appellant, through counsel, requested reconsideration of the October 26, 2021 decision. In support of her claim, appellant submitted a June 2, 2022 letter from Dr. Hebrard.

In the June 2, 2022 letter, Dr. Hebrard noted the denial of appellant's claim and his provision of a report dated August 4, 2021. He stated that "we feel there is nothing more we can add to [appellant's] case." Dr. Hebrard discussed the findings of OWCP's October 26, 2021

decision, and asserted that his August 4, 2021 report supported appellant's claim, which addressed her preexisting conditions and provided a pathophysiological explanation as to how the April 3, 2018 employment incident caused and aggravated her injuries.

By decision dated September 26, 2022, OWCP denied modification of the October 26, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> 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 incident identified by the employee.<sup>9</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 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).

<sup>5</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>6</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

<sup>7</sup> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

<sup>9</sup> *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

## ANALYSIS

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

In a report dated August 4, 2021, Dr. Hebrard discussed appellant's medical history, noting a prior motor vehicle accident resulting in a preexisting right shoulder injury and diagnosis of AC joint osteoarthritis. He opined, based on the history presented by appellant and the medical records, that the April 3, 2018 employment incident aggravated her preexisting right shoulder condition, and directly caused a permanent aggravation of her underlying thoracic and lumbosacral spine conditions. Dr. Hebrard explained the mechanism of injury as it related to the right shoulder, noting that the work-related trauma caused a shearing force across the AC joint, resulting in inflammation and flaring of the osteoarthritis, consistent with her complaints of stiffness and weakness.

Dr. Hebrard further discussed the mechanics of the spine injuries, reporting that the backwards fall caused axial loading with hyperextension that compressed the intervertebral discs of the thoracic and lumbosacral spine areas, causing posterior migration of those discs, which compressed adjacent nerve endings, as evidenced by appellant's lower extremity weakness. He explained that the weakness, coupled with sensory changes in the lower extremity, pointed to a permanent injury and aggravation of the underlying thoracic and lumbosacral spine conditions, as reflected by appellant's lumbar radiculopathy.

The Board finds that while Dr. Hebrard's medical opinion is not completely rationalized to meet appellant's burden of proof to establish her claim, it is sufficient to require OWCP to further develop appellant's claim.<sup>10</sup>

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.<sup>11</sup> It has an obligation to see that justice is done.<sup>12</sup>

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 and the medical record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion regarding whether she sustained a medical condition causally related to or aggravated by the accepted April 3, 2018 employment incident. If the second opinion physician disagrees with the opinion of Dr. Hebrard, he or she must provide a fully-rationalized explanation of why the accepted April 3, 2018 employment incident was insufficient to have

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<sup>10</sup> *L.J.*, Docket No. 22-1176 (issued November 20, 2023); *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).

<sup>11</sup> *M.W.*, Docket No. 21-0661 (issued July 20, 2023); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *John J. Carlone, id.*; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>12</sup> *K.K.*, Docket No. 22-0909 (issued April 4, 2023); *B.C.*, Docket No. 15-1853 (issued January 19, 2016).

caused or aggravated appellant's medical condition.<sup>13</sup> After this and other such further development of the case record as OWCP deems necessary, it 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 September 26, 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: December 11, 2023  
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

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<sup>13</sup> *Id.*