United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 23-0690**
	)	**Issued: December 5, 2023**
DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES VA MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Brett Elliot Blumenstein, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 17, 2023 appellant, through counsel, filed a timely appeal from an October 20, 2022 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 established a medical condition causally related to the accepted November 23, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as presented in the prior order are incorporated herein by reference. The relevant facts are as follows.

On December 6, 2018 appellant, then a 56-year-old medical doctor, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2018 she injured her upper arms, neck, lower back, and left leg, and sustained a skin abrasion of her upper back and lower neck when she fell backwards off a chair onto the floor while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx860.

Appellant sustained a prior traumatic injury on January 9, 2017 when she slipped and fell on a wet floor. OWCP assigned this claim OWCP File No. xxxxxx259 and accepted it for intervertebral disc disorders with radiculopathy, lumbar region; sprain of ligaments of thoracic spine; sprain of other parts of lumbar spine and pelvis; and unspecified sprain of left hip.

In support of her claim under OWCP File No. xxxxxx860, appellant submitted a December 3, 2018 emergency treatment report signed by a nurse practitioner releasing appellant to work with restrictions.

In a development letter dated June 27, 2019, OWCP informed appellant of the deficiencies of her claim. It explained the type of factual and medical evidence needed and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

By decision dated July 30, 2019, OWCP denied appellant's claim in OWCP File xxxxx860, finding that the evidence of record was insufficient to establish that the November 23, 2018 incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

A December 17, 2018 report from Dr. Francis M. Ferrante, a Board-certified internist and anesthesiologist, and Dr. Varun Shahi, an emergency medicine specialist, discussed appellant's history of a March 2017 L3-4 microdiscectomy. Drs. Ferrante and Shahi advised that appellant had recently fallen off a chair, aggravating the pain in her low back and experiencing "new neck pain." Their examination demonstrated tenderness to palpation of left paraspinal region and decreased sensation over left medial thigh and leg. Drs. Ferrante and Shahi noted that an August 28, 2018 lumbar spine magnetic resonance imaging (MRI) scan revealed minor postsurgical residual enhancements in the left L3-4 neural foramen, a December 2018 electromyogram/nerve conduction velocity (EMG/NCV) study was normal, and a December 2018 pelvis MRI scan demonstrated abnormal T2 hyperintensity and mild increased caliber of the left

[3] *Order Remanding Case*, Docket No. 22-0191 (issued May 26, 2022).

L4 nerve compatible with segmental left L4 mononeuropathy. They provided differential diagnoses of lumbar radiculopathy, complex regional pain syndrome (CRPS), plexopathy, myofascial pain, polyneuropathy, cervical paraspinal muscle strain, cervical fracture, and cervical radiculopathy.[4]

In a report dated December 18, 2018, Dr. Felicia C. Yu, and Dr. Isabella Lai, both Board-certified internists, related appellant's history of left leg and hip pain in January 2017 after a fall, followed by a March 2017 microdiscectomy at L3-4. They noted that she had strained the muscles in her neck after falling off a chair. Drs. Yu and Lai diagnosed muscle strain of the left thigh, left anterior leg pain, low back pain radiating to the left leg, acute lumbar radiculopathy, status post lumbar discectomy, lumbar spinal stenosis, neck strain, neck pain, and chronic left-sided low back pain with left sciatica.

On December 20, 2018 Dr. Ferrante noted that appellant's recent fall off a chair had aggravated her lower back pain, and he held appellant off work pending reevaluation in view of her second fall superimposed on her initial disabling injury.

On January 2, 2019 Dr. Arash D. Kohanteb, Board-certified in emergency medicine, noted that appellant had experienced intermittent neck pain and headaches since falling off a chair and hitting her head a month prior. Dr. Kohanteb diagnosed neck strain and a nonintractable headache of unspecified chronicity and type.

In reports dated January 16 and 29, 2019, Dr. Justin G. Laube, a Board-certified internist, related that appellant recently fell of a chair and strained her neck muscles, noting that she had a previous fall in January 2017. He diagnosed spinal stenosis of lumbar region, stress, caregiver burden, muscle strain of left thigh, anterior left leg pain, status post lumbar discectomy, strain of neck muscle, and low back sprain. In the January 29, 2019 report, Dr. Laube added diagnoses of low back pain radiating to left leg, acute lumbar radiculopathy, neck pain, and chronic left-sided low back pain with sciatica.

In a January 23, 2019 narrative report, Dr. Ferrante related that appellant's November 23, 2018 fall from a chair at work "resulted in a severe whiplash neck injury and an exacerbation of the symptoms of her previous lower back/left leg injury." He noted that the fall intensified her chronic lower back pain and left leg radiculopathy and held her off work "to allow her to recover from an acute work-related injury." In a report of even date, Dr. Ferrante noted that appellant attributed her neck pain to a fall from a chair in November 2018. He listed the same differential diagnoses as in his December 17, 2018 report. Dr. Ferrante provided similar reports dated March 26 and August 6, 2019.

In a February 11, 2019 progress report, Dr. Yu related appellant's history of injury and diagnosed neck pain, anterior left leg pain, lumbar spinal stenosis, low back pain radiating into the left leg, lumbar radiculopathy, chronic left-sided low back pain with sciatica, status post lumbar discectomy, right trapezius muscle strain, and chronic left knee pain. She provided similar progress reports dated April through November 2019.

[4] A December 17, 2018 cervical spine x-ray revealed mild degenerative disc disease between C4 and C7.

On August 6, 2019 Dr. Ferrante repeated appellant's history of injury and opined that the November 23, 2018 fall had intensified her chronic lower back pain and the left leg radiculopathy. On October 8, 2019 he related her history of falling from a chair and recommended facet injections from C3 to C7, noting that her neck pain had recently increased.

On September 3, 2019 Dr. Laube related that appellant fell off a chair and strained her neck muscles. He diagnosed anterior left leg pain, stress, neck pain, and a muscle strain of the left thigh.

In a report dated February 3, 2020, Dr. Ferrante discussed appellant's complaints of neck pain radiating into her upper back and chronic left hip and leg pain. He provided diagnoses of lumbar radiculopathy, CRPS, plexopathy, myofascial pain, polyneuropathy, cervical whiplash, cervical spondylosis, and paraspinal muscle strain. In a February 5, 2020 work excuse note, Dr. Ferrante held appellant off work until February 14, 2020 due to worsening neck pain status post whiplash injury due to fall and worsening left leg pain from leg radiculopathy status post slip and fall.

On February 12, 2020 Dr. Jakun Ing, a Board-certified anesthesiologist, related that appellant's left leg and lower back pain from the accepted January 9, 2017 employment injury persisted after surgery and had "markedly intensified after the fall from a chair at work on November 23, 2018 when she sustained a severe neck whiplash injury and severe ongoing neck and upper back pain, muscle spasms, headaches, and markedly reduced neck mobility." Dr. Ing opined that a lack of reasonable accommodation at work had exacerbated her left leg and neck pain.

On February 24, 2020 appellant, through counsel, requested reconsideration. In support of her request, she submitted an undated statement describing the circumstances surrounding her fall from a chair at work on November 23, 2018, as well as a statement from a coworker, who found appellant on the floor next to her chair after the fall on November 23, 2018.

Appellant submitted a March 26, 2020 narrative report from Dr. Ferrante under OWCP File No. xxxxxx259 in which he discussed her January 2017 slip and fall and noted that she sustained a whiplash injury from the November 2018 fall from a chair, which resulted in persistent neck and upper back pain. He diagnosed protrusion of intervertebral lumbosacral disc, status post L3-L4 microdiscectomy, lumbar radiculopathy, lower back muscle spasm, whiplash injury, and neck muscle spasm.

By decision dated November 12, 2020, OWCP modified its July 30, 2019 decision to find that appellant had factually established the occurrence of the November 23, 2018 employment injury and submitted medical evidence containing a diagnosis. It further found, however, that the medical evidence was insufficient to show that she sustained a diagnosed medical condition causally related to the accepted November 23, 2018 employment incident.

OWCP subsequently received a May 20, 2020 narrative report from Dr. Ferrante under OWCP File No. xxxxxx259, noting that appellant's left leg and lower back pain "markedly intensified" after the accepted November 23, 2018 employment incident when she sustained a

severe neck whiplash injury, severe neck and upper back pain, muscle spasms, headaches, and markedly reduced neck mobility.[5]

On February 24, 2021 Dr. Ferrante again reviewed appellant's history injury on January 9, 2017 and November 23, 2018. He advised that her fall from a nonergonomic chair at work on November 23, 2018 had caused a severe whiplash injury to her neck resulting in neck and upper back pain, muscle spasms, headaches, reduced neck mobility, and right arm pain and numbness.[6]

On April 9, 2021 appellant, through counsel, requested reconsideration.

By decision dated May 7, 2021, OWCP denied modification of its November 12, 2020 decision.

In a narrative report dated July 14, 2021, Dr. Ferrante again discussed appellant's history of injury beginning on January 9, 2017 and related that her fall from a chair on November 23, 2018 at work had aggravated the pain in her back, hip, and left leg, and caused a severe whiplash injury of the neck and strains/sprains of the neck, back, bilateral shoulders more on the right, and right arm ulnar neuropathy with paresthesia of the right arm. In a report of even date submitted under OWCP File No. xxxxxx259, he noted that the November 2018 fall led to skin abrasions, paresthesia to bilateral upper extremities, and a whiplash injury, which contributed to neck, upper back, and shoulder muscle strains, myofascial pain syndrome, cervical radiculopathy, ulnar neuropathy, reduced neck mobility, and occipital headaches. Dr. Ferrante also noted that the fall exacerbated appellant's lower back pain, left radiculopathy, and left leg pain.

On September 15, 2021 appellant requested reconsideration.

An October 19, 2021 narrative report from Dr. Ferrante under OWCP File No. xxxxxx259 discussed appellant's accepted January 9, 2017 employment injury and explained that appellant's fall from a chair on November 23, 2018 "acutely exacerbated her lower back pain." He noted, however, that symptoms related to the November 2018 fall had resolved and that a subsequent lumbar spine MRI scan did not demonstrate worsening of the findings seen in imaging predating the fall.

By decision dated October 21, 2021, OWCP denied modification of its May 7, 2021 decision.

On November 18, 2021 appellant appealed to the Board.

Appellant subsequently submitted an August 17, 2021 narrative report from Dr. Ferrante in which he explained that her fall from a chair on November 23, 2018 markedly worsened her previous lower and upper back sprains, left leg radiculopathy, neuropathic pain, L3-L4

[5] MRI scans of the cervical, thoracic, and cervical spines obtained on December 18, 2020 demonstrated mild degenerative changes of the cervical spine, a small central disc protrusion at T6-7, a small disc protrusion at L3-4, and severe disc degeneration and disc height loss at L4-5 and L5-S1.

[6] A March 10, 2021 EMG/NCV study revealed mild left ulnar neuropathy at the elbow. On March 25, 2021 Dr. Ferrante performed a cervical epidural injection and noted a pre- and postoperative diagnosis of cervical radiculopathy.

radiculopathy, and back sprains and pains. He opined that, "[d]uring the fall from the chair, she sustained a severe neck whiplash injury, neck and upper thoracic sprains and strains, myofascial pain syndrome of these regions, cervical radiculopathy, right ulnar neuropathy with paresthesia, cervicalgia, and occipital headaches," noting that the nerve injury was confirmed by an abnormal EMG/NCV study on March 10, 2021. Additionally, Dr. Ferrante noted that appellant had been examined by multiple providers between the accepted January 2017 injury and the accepted November 23, 2018 employment incident, and that none of these providers saw or treated appellant for any diagnoses related to those that appeared after the fall. He asserted that the fact that these symptoms and findings arose immediately after the work-related fall "eliminat[ed] any doubt that the current symptoms and conditions are due to the injury that [appellant] sustained on November 23, 2018."

Appellant continued to submit medical evidence under OWCP File No. xxxxxx259. On October 25, 2021 she underwent a spinal cord stimulator trial performed by Dr. Ferrante. In progress reports dated October 5 through November 9, 2021, Dr. Ferrante noted that appellant's November 2018 fall from a chair transiently exacerbated her low back and left lower extremity radicular pain.

In a February 21, 2022 second opinion report under OWCP File No. xxxxxx259, Dr. Surasak Phuphanich, a Board-certified neurologist, reviewed appellant's history of injury and treatment for the accepted January 9, 2017 employment injury and the accepted November 23, 2018 employment incident. He noted findings of localized tenderness of the lower cervical spine with limited range of motion, which correlated with abnormal MRI scan findings of degenerative change at C4-C7, as well as mild tenderness along the lumbar spine with limitation of thoracolumbar movement and mild weakness of left leg associated with decreased sensation. Dr. Phuphanich diagnosed L3-4 disc herniation with left L4 radiculopathy status post L3-4 microdiscectomy, left foraminal disc/lateral disc bulge at L5-S1 with mild neural foraminal stenosis, low back pain with muscle spasm, whiplash neck injury with degenerative disc disease between C4 and C7 and muscle spasm, and right ulnar nerve neuropathy from entrapment at elbow. He opined that appellant sustained a work-related back injury on January 9, 2017, which resulted in a herniated disc at L3-4, and a second injury at work on November 23, 2018 when she fell backward from a chair. Dr. Phuphanich explained that when she fell from the chair, she hit her head and sustained an abrasion and neck and back pain and that this injury "further aggravated back, hip and left leg pain and caused a whiplash injury of the neck, back and shoulders, and right ulnar neuropathy." He advised that appellant could perform light-duty work with restrictions and opined that her disability was "directly related to" the January 9, 2017 injury and "aggravated again" on November 23, 2018.

By order dated May 26, 2022, the Board set aside OWCP's October 21, 2021 decision, finding that, for a full and fair adjudication, it was necessary to administratively combine OWCP File Nos. xxxxxx860 and xxxxxx259, so that all of the relevant claim files could be considered. The Board remanded the case to OWCP for further development followed by a *de novo* decision regarding causal relationship.[7]

[7] *Supra* note 3.

On remand OWCP administratively combined the case files per the Board's May 26, 2022 order.[8] By decision dated October 20, 2022, it denied modification of its May 7, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[9] 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 period of FECA,[10] 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.[11] 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.[12]

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.[13] The second component is whether the employment incident caused a personal injury.[14]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[15] 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.[16]

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[8] *Id*.

[9] *Supra* note 2.

[10] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[11] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[12] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[13] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[14] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[15] *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).

[16] *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 February 21, 2022 second opinion report under OWCP File No. xxxxxx259, Dr. Phuphanich related appellant's history of injury and treatment and diagnosed L3-4 disc herniation with left L4 radiculopathy status post L3-4 microdiscectomy, left foraminal disc/lateral disc bulge at L5-S1 with mild neural foraminal stenosis, low back pain with muscle spasm, whiplash neck injury with degenerative disc disease between C4 and C7 and muscle spasm, and right ulnar nerve neuropathy from entrapment at elbow. He opined that appellant sustained a work-related back injury on January 9, 2017, which resulted in a herniated disc at L3-4, and a second injury at work on November 23, 2018 when she fell backward from a chair. Dr. Phuphanich explained that when she fell from the chair, she hit her head and sustained an abrasion and neck and back pain and that this injury "further aggravated back, hip and left leg pain and caused a whiplash injury of the neck, back and shoulders and right ulnar neuropathy." He advised that appellant could perform light-duty work with restrictions and opined that her disability was "directly related to" the January 9, 2017 injury and "aggravated again" on November 23, 2018.

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.[17] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[18] Once OWCP starts to procure medical opinion, it must do a complete job in securing from its referral physician an opinion which adequately addresses the relevant issues.[19]

Dr. Phuphanich asserted that appellant sustained several medical conditions due to fall from a chair on November 23, 2018 but he did not fully explain the medical mechanics of how the conditions were sustained. The case must therefore be remanded for clarification from him to provide further explanation and medical rationale as to how appellant sustained injury on November 23, 2018 and to clarify the precise nature of any medical conditions and disability sustained as a result. If Dr. Phuphanich is unable to clarify or elaborate on his previous report, or if the supplemental report lacks rationale, OWCP must submit the case record and a detailed SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.[20] After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

[17] *See J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[18] *See A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

[19] *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

[20] *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 20, 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 5, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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