

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

C.H., Appellant)	
)	
and)	Docket No. 23-0767
)	Issued: December 8, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTION HERLONG,)	
Herlong, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 4, 2023 appellant filed a timely appeal from a May 4, 2023 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 medical condition causally related to the accepted June 29, 2021 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 29, 2021 appellant, then a 44-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that, on that same day, he sustained a low back injury when he rose to stand from a crouched position after searching an incoming vehicle for contraband while in the performance of duty. He stopped work on the date of injury. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant had been injured in the performance of duty as alleged.

In a July 1, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP received a June 30, 2021 work slip with an illegible signature.

In a July 6, 2021 report, Dr. James Olson, a Board-certified orthopedic surgeon, recounted that, while at work approximately one week previously, appellant rose to a standing position after inspecting the underside of a large vehicle and experienced "a sudden increase in pain in [his] right lower lumbar spine that radiated down his right posterior thigh." He recounted appellant's complaints of right lower lumbar pain radiating over the right sacroiliac joint into the right posterior thigh. Dr. Olson recommended a lumbar magnetic resonance imaging (MRI) scan and a lumbar intra-articular injection.

In a work slip also dated July 6, 2021, Dr. Olson held appellant off work through August 6, 2021.

By decision dated August 12, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted June 29, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received an unsigned August 4, 2021 visit summary and diagnostic study order of the same date.

On August 17, 2021 appellant requested reconsideration.

In a September 1, 2021 report, Dr. Olson noted that, on June 29, 2021, while at work, appellant was assigned to search and inspect incoming vehicles, as well as to search large pallets. These duties involved bending, lifting, twisting, and "contorting [appellant's] body[.]" which placed "very significant demands on [appellant's] back and extremities." While he had lumbar "symptoms to a much lesser degree" prior to the incident, "this was the event that caused [appellant's] back to become severely painful." He also experienced pain radiating down the right posterior buttock and thigh. On examination, Dr. Olson observed negative straight leg raising tests bilaterally, decreased pinprick sensation in the right S1 dermatome, and slight weakness of the right peroneal and gastric soleus. He opined that appellant had a "likely L5-S1 herniated nucleus pulposus with right-sided radiculopathy sciatica and episodes of muscle weakness." Dr. Olson explained that appellant had clear deficits of an S1 radiculopathy on physical examination, with "definitive evidence of a disc herniation on history and physical examination." He diagnosed S1

radiculopathy, likely L5-S1 right-sided herniated nucleus pulposus with radiculopathy, possible L4-5 disc herniation, and “industrial injury causing right-sided L5-S1 herniated nucleus pulposus and radiculopathy.”

In a September 2, 2021 memorandum, the employing establishment asserted that appellant had been injured at work on June 29, 2021 while inspecting a vehicle at the rear gate. It explained that he was responsible as the assigned gate officer to inspect underneath vehicles for contraband.

By decision dated November 19, 2021, OWCP denied modification of its August 12, 2021 decision.

On December 2, 2021 appellant requested reconsideration and submitted additional evidence.²

Appellant subsequently submitted an August 4, 2021 report wherein Dr. Olson recounted appellant’s continued lower lumbar pain with right-sided radiculopathy “that started after bending under a car at work.” Dr. Olson returned appellant to full-duty work effective August 18, 2021.

In a December 1, 2021 report, Dr. Olson opined that appellant demonstrated clear findings of a herniated disc as he had right-sided S1 radiculopathy with objective muscle weakness on examination. He diagnosed S1 radiculopathy, L5-S1 right-sided herniated nucleus pulposus with radiculopathy, L4-5 disc herniation, and “industrial injury causing right-sided L5-S1 herniated nucleus pulposus and radiculopathy.”

In another report also dated December 1, 2021, Dr. Olson noted that the diagnoses of L5-S1 herniated nucleus pulposus, radiculopathy, and spinal stenosis were related to the June 29, 2021 employment incident while searching incoming vehicles.

By decision dated March 4, 2022, OWCP modified its November 19, 2021 decision to reflect that the medical evidence of record established medical diagnoses causally related to the accepted June 29, 2021 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted June 29, 2021 employment incident.

In a March 10, 2022 statement, the employing establishment corroborated that on June 29, 2021 appellant’s assigned duties as a gate officer had required him to “bend down and inspect under any incoming vehicles.”

On March 14, 2022 appellant requested reconsideration. He submitted a March 13, 2022 statement and an employing establishment inspection procedure document indicating that an officer was required to crawl beneath incoming trucks to inspect them for contraband as the frame rails, drive train, and axles could not be examined adequately with an inspection mirror.

² Appellant also submitted copies of evidence previously of record.

By decision dated October 26, 2022, OWCP denied modification of its March 4, 2022 decision.

On November 15, 2022 appellant requested reconsideration and submitted additional evidence.

In a November 9, 2022 report, Dr. Olson opined that appellant's lumbar pain with right-sided radiculopathy, paresthesias, numbness, and weakness was "the direct result" of the June 29, 2021 employment incident. He explained that crawling under a box truck "was extremely demanding physically and when [appellant] stood up [appellant] felt immediate pain in his low back with radiation of symptoms to his right lower extremity." Dr. Olson added the "specific demands on his physiology during the search of the underneath of the box car is solely responsible for [appellant's] symptoms ever since this event." He added that appellant's symptoms were almost certainly attributable to an L5-S1 disc herniation, but could also be caused by an L4-5 disc herniation as well. Dr. Olson diagnosed low back pain with right lower extremity radiculopathy secondary to June 29, 2021 industrial injury, and "neurological deficits on physical examination consistent with a lower lumbar S1 nerve root compromise."

OWCP also received a November 28, 2022 request for authorization of medical treatment.

In a December 20, 2022 report, Dr. Olson noted a recent severe exacerbation of appellant's lumbar pain and right-sided radiculopathy. He prescribed medication. Dr. Olson recommended that OWCP authorize a lumbar MRI scan as soon as possible to prevent further neurologic compromise.

By decision dated May 4, 2023, OWCP denied modification of its October 26, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.⁷

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

ANALYSIS

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

Dr. Olson explained in a September 1, 2021 report that appellant's duties on June 29, 2021 while inspecting incoming vehicles required appellant to contort his body, bend, lift, and twist, which placed very significant demands on his back and extremities. He opined that the June 29, 2021 employment incident caused an L5-S1 disc herniation with right-sided radiculopathy.

The Board finds that Dr. Olson's September 1, 2021 report is sufficient to require further development of the medical evidence. Dr. Olson demonstrated a comprehensive understanding of the medical record and case history. His reports provide a detailed explanation as to how the accepted June 29, 2021, employment incident caused and aggravated appellant's diagnosed lumbosacral condition and radiculopathy.

While Dr. Olson's medical opinion is insufficient to establish the claim, it is sufficient to require further development of 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

⁷ *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).

⁸ *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).

⁹ *S.C.*, Docket No. 21-0929 (issued April 28, 2023); *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).

¹⁰ *See W.S.*, Docket No. 22-0777 (issued April 6, 2023); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *John J. Carlone*, *supra* note 7; *William J. Cantrell*, 34 ECAB 1223 (1983).

responsibility in the development of the evidence.¹¹ OWCP has an obligation to see that justice is done.¹²

The case must, therefore, be remanded for further development. On remand, OWCP shall prepare a statement of accepted facts and refer appellant, along with the case record, to a specialist in the appropriate field of medicine, for a reasoned opinion regarding whether he sustained a medical condition causally related to or aggravated by the accepted June 29, 2021 employment incident. If the second opinion physician disagrees with the opinion of Dr. Olson, he or she must provide a fully-rationalized explanation of why the accepted June 29, 2021 employment incident was insufficient to have caused or aggravated appellant's medical condition. 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.

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

¹² *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2023 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 8, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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