

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

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J.F., Appellant)	
)	
and)	Docket No. 23-0963
)	Issued: December 8, 2023
U.S. POSTAL SERVICE, FOND DU LAC POST)	
OFFICE, Fond Du Lac, WI, Employer)	
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Appearances:
Appellant, pro se
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 July 5, 2023 appellant filed a timely appeal from a June 8, 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 her burden of proof to establish cervical and lumbar conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 5, 2021 appellant, then a 65-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that her multiple level cervical and lumbar disc degenerative conditions and spondylosis were caused or aggravated by factors of her federal employment. She

¹ 5 U.S.C. § 8101 *et seq.*

explained that the repetitive bending, squatting, lifting, pushing, pulling, reaching, twisting, turning, and walking up and down stairs involved in her work duties accelerated her conditions. Appellant first became aware of her conditions and that they were caused or aggravated by her federal employment on April 8, 2019.

In a March 5, 2021 narrative statement, appellant described her job duties, noted her medical history, and indicated that she needed cervical surgery.

In a January 6, 2021 report, Dr. Thomas Perlewitz, an orthopedic surgeon, noted appellant's work duties, as related by appellant. He opined that her work at the employing establishment, which required repetitive bending, squatting, lifting, and reaching, had accelerated her cervical and lumbar disc degeneration and spondylosis, and resulted in symptoms of persistent and progressive neck and low back pain. Dr. Perlewitz discussed the results of appellant's diagnostic testing, including x-ray and magnetic resonance imaging (MRI) scans of both the cervical and lumbar spines. He opined that her neck and low back pain was secondary to a work-related aggravation, and acceleration of multilevel cervical and lumbar disc degeneration and spondylosis. Dr. Perlewitz also provided work restrictions.

A November 30, 2020 cervical spine MRI scan noted multilevel degenerative changes resulting in moderate central stenosis at C3-4, mild central stenosis at C4-5 and C5-6 with multilevel neural foraminal stenosis.

In a development letter dated October 5, 2021, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence needed to establish her claim. OWCP provided a questionnaire for appellant's completion. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded both parties 30 days to respond. No response was received.

By decision dated December 9, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted factors of her federal employment.

On February 22, 2022 appellant requested reconsideration. In a February 15, 2022 statement, she indicated that she reinjured her neck and back on December 8, 2021, and had filed a claim under OWCP File No. xxxxxx747.² Appellant provided a blurred copy of work restrictions with an illegible date and signature.

In a January 21, 2022 report, Dr. Perlewitz indicated that appellant's diagnoses were neck pain, cervical radiculopathy, low back pain, and L4-5 degenerative spondylolisthesis. He also listed MRI scan findings. Dr. Perlewitz opined that appellant's neck and low back pain, and upper extremity radiculopathy were the direct result of the physical demands of her job. He explained that the repetitive bending, squatting, lifting, and reaching placed significant strain on her neck

² On February 7, 2022 appellant filed a notice of traumatic injury (Form CA-1) alleging that on December 8, 2021 she reinjured her neck and back through the course of the day. OWCP assigned File No. xxxxxx747, however it has not issued a final decision under this file number.

and low back which caused the development of chronic and progressive symptoms of neck and low back pain and upper extremity radiculopathy.

By decision dated May 23, 2022, OWCP denied modification of its December 9, 2021 decision as the medical evidence failed to contain a well-rationalized opinion which explained physiologically how factors of appellant's employment caused or contributed to her diagnosed conditions.

On March 24, 2023 appellant requested reconsideration. OWCP received physical evidence which included two compact discs of MRI scans and x-rays.

In a March 2, 2023 report, Dr. Perlewitz reported that appellant had been under his care since April 2019 for symptoms of persistent neck pain, low back pain, and upper extremity radiculopathy, which developed during the course of her employment. He opined that her symptoms of neck and low back pain, and upper extremity radiculopathy were the direct result of the physical demands of her job. In particular, the repetitive bending, squatting, lifting, and reaching placed significant strain on appellant's neck and low back which caused the development of chronic and progressive symptoms of neck and low back pain and upper extremity radiculopathy. Dr. Perlewitz related that he had reviewed appellant's MRI scan, which demonstrated multilevel cervical disc degenerative changes with severe disc space collapse at C3-7, with severe right neural foraminal stenosis at C3-5, moderate bilateral neural foraminal stenosis at C5-6, and left neural foraminal stenosis at C6-7. He also reviewed x-rays of her lumbar spine which he related demonstrated multilevel lumbar disc degenerative changes, underlying dextroscoliosis, facet arthropathy at L4-5, with trace anterolisthesis at the L4-5 level. Dr. Perlewitz indicated that appellant's current diagnoses were cervical radiculopathy, and L4-5 degenerative spondylolisthesis.

On April 6, 2023 OWCP referred appellant, the medical record and an April 6, 2023 statement of accepted facts (SOAF) and a list of questions, to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion examination to determine the causal relationship of appellant's cervical and lumbar spine conditions. The April 6, 2023 SOAF did not indicate that appellant also had a claim for cervical and lumbar conditions under OWCP File No. xxxxxx747.

In a May 24, 2023 report, Dr. Shivaram reviewed the SOAF, the medical record, and noted appellant's complaints regarding her cervical and lumbar spine. He provided her physical examination findings, and indicated that he concurred with the findings on MRI scan and x-rays regarding her cervical and lumbar spine. Dr. Shivaram diagnosed multilevel degenerative disc disease of the cervical spine with cervical spinal stenosis, severe foraminal stenosis at C3-4, C4-5 level, moderate foraminal stenosis at C5-6, C6-7 level, chronic lower back pain with degenerative disc disease at L4-5 level and facet arthropathy at L4-5 level. Based on medical literature, which he referred to as *The American Medical Association Guidelines to the Evaluation of Disease and Injury Causation*, Dr. Shivaram opined that appellant's work activities did not cause her degenerative disc disease of the cervical spine, facet arthritis, cervical spine or degenerative disc disease of the lumbar spine associated with facet arthritis. He concluded that she had retired, but that she could return to her date-of-injury position.

By decision dated June 8, 2023, OWCP denied modification of its May 23, 2022 decision. Weight of the medical opinion evidence was afforded to Dr. Shivaram's May 24, 2023 opinion.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

ANALYSIS

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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *A.D.*, Docket No. 21-0415 (issued June 8, 2023); *M.V.*, *id.*

The issue in this case is whether appellant has established that her diagnosed cervical and lumbar conditions are causally related to the accepted factors of her federal employment. By decision dated June 8, 2023, OWCP denied modification of its May 23, 2022 decision and found that the Dr. Shivaram's May 24, 2023 opinion constituted the weight of the medical evidence.

In addressing causal relationship, Dr. Shivaram concluded that based on medical literature, specifically *The American Medical Association Guidelines to the Evaluation of Disease and Injury Causation*, appellant's work activities did not cause her degenerative disc disease of the cervical spine, facet arthritis, cervical spine or degenerative disc disease of the lumbar spine associated with facet arthritis. The Board has held, however, that reliance on medical literature has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.¹⁰ Dr. Shivaram relied on the medical literature to explain his conclusion regarding causal relationship, but he did not otherwise address whether or not appellant's accepted employment factors could have caused or contributed to her conditions. The Board finds, therefore, that he did not provide sufficient medical rationale to support his conclusion.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹¹ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹²

The Board also notes that OWCP provided Dr. Shivaram a deficient SOAF, which did not reflect appellant's subsequent claim concerning her reported neck and back conditions in OWCP File No. xxxxxx747. On remand OWCP shall administratively combine the present case with OWCP File No. xxxxx747 and any other relevant existing claims appellant may have pertaining to her diagnosed neck and back conditions and then prepare an updated SOAF.¹³ It shall then refer the case record, together with the updated SOAF, to Dr. Shivaram for a reasoned opinion regarding whether the accepted employment factors contributed to a diagnosed condition or caused an aggravation of a preexisting condition.¹⁴ If Dr. Shivaram is unable to clarify or elaborate on his original report, or if his supplemental report is vague, speculative, or lacking in rationale, OWCP

¹⁰ *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

¹¹ *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹² *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000); *J.M.*, Docket No. 23-0162 (issued June 22, 2023); *K.G.*, Docket No. 21-0068 (issued July 29, 2022); *D.J.*, Docket No. 20-0997 (issued November 20, 2020); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).

¹⁴ See *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

shall refer appellant to a new second opinion physician.¹⁵ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 8, 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

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

¹⁵ *S.G., id.; G.T., id.; see also D.L.*, Docket No. 20-0886 (issued November 9, 2021).