

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

S.S., Appellant)	
)	
and)	Docket No. 23-0450
)	Issued: February 16, 2024
DEPARTMENT OF HEALTH & HUMAN)	
SERVICES, FOOD & DRUG)	
ADMINISTRATION, Alameda, CA, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 February 13, 2023 appellant, through counsel, filed a timely appeal from a November 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 4, 2022 appellant, then a 64-year-old consumer safety inspector, filed an occupational disease claim (Form CA-2) alleging that she developed lower back, right hip, and right knee conditions due to factors of her federal employment including sitting for long periods to review documents, and lifting documents, computer equipment, and luggage weighing up to 65 pounds. She noted that she first became aware of her condition on June 21, 2021, and realized its relationship to her federal employment on April 18, 2022. Appellant did not stop work.

In a September 27, 2021 note, Dr. Ella Khan, a Board-certified family medicine specialist, excused appellant from work for the period September 27 through October 4, 2021, and indicated that she could return to work without restriction on October 5, 2021.

In an accompanying May 4, 2022 narrative statement, appellant further described her employment duties and the course of medical treatment for her claimed employment conditions.

In support of her claim, appellant submitted January 10 and April 22, 2022 magnetic resonance imaging (MRI) scans of the lumbar spine. She also submitted February 17, 2022 x-rays of the hips and lumbar spine.

In an April 18, 2022 note, Dr. Robert Buckley, a Board-certified orthopedic surgeon, reported that appellant was unable to work full time secondary to prolonged sitting, lifting, and field work associated with her employment duties. He reported that she could work one to two days per week, provided that she had access to a heating pad and ice packs.

In an April 22, 2022 report, Dr. Vanessa Y. Calderon, Board-certified in emergency medicine, discussed appellant's complaints of lumbar and right hip pain, noting that she walked with an antalgic gait, using a cane. She reviewed diagnostic testing and diagnosed severe spinal stenosis of the lumbar spine.

In a May 11, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding appellant's claim. It afforded both parties 30 days to respond.

On May 16, 2022 the employing establishment responded to OWCP's questionnaire, stating that it concurred with appellant's statements pertaining to her occupational duties and employment factors. It submitted a consumer safety officer position description, detailing the duties of the position.

By decision dated June 28, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On August 12, 2022 appellant, through counsel, requested reconsideration. In an accompanying narrative statement, appellant described her employment duties, which included sitting for 6 to 10 hours per day, and moving office supplies, computer equipment, and printer weighing up to 65 pounds from the floor onto her desk at her inspection site, work cubicle, and home office. She also lifted a carry-on bag in and out of her vehicle and carried it at the same sites. Appellant reported that, due to long work hours and long periods of time spent traveling for work, she did not have many outside activities.

In support of reconsideration, appellant submitted a June 13, 2022 report, wherein Dr. Buckley provided a history of injury reporting that she worked as an inspector since 2002 for 40 to 60 hours per week. In June 2021, she complained of significant stiffness and pain radiating into her buttocks, legs, and lower back. Based on a review of appellant's history, diagnostic studies, and physical examination findings, Dr. Buckley opined that her work-related duties over time caused her degenerative disc disease, lumbar disc protrusions, and facet arthropathy resulting in spinal stenosis, spondylolisthesis, and lumbar radiculopathy. He explained the medical definition for each of the diagnoses mentioned. Dr. Buckley reported:

“The combination of degenerative disc disease, disc protrusions, joint arthritis, and anterior spondylolisthesis results in both central and lateral foraminal stenosis (narrowing of the vertebral canal and foraminal where the nerves exit to the lower extremities), which compresses the nerve root as it exits the canal, resulting in a lumbar radiculopathy (*i.e.*, pain and [paresthesia] radiating into the lower extremities with lower extremity weakness[]).

He reported that aging, overuse, and trauma were the primary causes of lumbar spinal stenosis.

Dr. Buckley opined that appellant's work activities of sitting 10 hours per day and lifting and maneuvering heavy luggage and equipment weighing 40 to 65 pounds for approximately one to eight times per day resulted in her disc degeneration, disc protrusions, facet arthritis, spondylolisthesis, and subsequent spinal stenosis manifested by pain and weakness in her lower extremities. He referenced the January 10 and April 23, 2022 MRI scans as support for his opinion, noting that the level of degeneration was more than what he would have expected for someone her age, particularly because she had no activities outside of work that would have contributed to those conditions. Dr. Buckley opined with reasonable medical certainty that appellant's work-related duties over time caused and accelerated her degenerative disc disease, lumbar disc protrusions, and facet arthropathy.

By decision dated November 9, 2022, OWCP denied modification of its June 28, 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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.⁹ 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).¹⁰

ANALYSIS

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

³ *Id.*

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *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*, *supra* note 7.

In his June 13, 2022 report, Dr. Buckley discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination. He opined that her work-related duties over time caused her degenerative disc disease, lumbar disc protrusions, and facet arthropathy resulting in spinal stenosis, spondylolisthesis, and lumbar radiculopathy. Dr. Buckley discussed the mechanism of injury for this occupational disease claim.¹¹ He explained that appellant's combination of degenerative disc disease, disc protrusions, joint arthritis, and anterior spondylolisthesis resulted in both central and lateral foraminal stenosis (narrowing of the vertebral canal and foraminal where the nerves exit to the lower extremities), which compressed the nerve root as it exited the canal, resulting in a lumbar radiculopathy. Dr. Buckley further explained that the work activities of sitting 10 hours per day and lifting and maneuvering heavy documents, luggage, and equipment weighing 40 to 65 pounds for approximately one to eight times per day resulted in appellant's disc degeneration, disc protrusions, facet arthritis, spondylolisthesis, and subsequent spinal stenosis manifested by pain and weakness in her lower extremities. He referenced the January 10 and April 23, 2022 MRI scans as support for his opinion, noting that the level of degeneration was more than what he would have expected for someone her age, particularly because she had no activities outside of work that would have contributed to those conditions. Dr. Buckley opined with reasonable medical certainty that appellant's work-related duties over time caused and accelerated her degenerative disc disease, lumbar disc protrusions, and facet arthropathy.

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 for the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

While Dr. Buckley's opinion is not fully rationalized, it is sufficient to require further development of the medical evidence.¹⁴ On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted factors of federal employment either caused or aggravated her diagnosed conditions.¹⁵ If the second opinion physician disagrees with the opinion of Dr. Buckley, he or she must provide a fully-rationalized explanation as to why the accepted employment factors were insufficient to have caused or

¹¹ See *G.G.*, Docket No. 23-0774 (issued October 25, 2023); *S.B.*, Docket No. 20-1458 (issued March 5, 2021); *L.H.*, Docket No. 17-0947 (issued March 8, 2018).

¹² See *id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

¹³ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *Id.*; see also *C.A.*, Docket No. 22-0067 (issued October 26, 2023); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

aggravated appellant's diagnosed conditions. Following this and such 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 November 9, 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: February 16, 2024
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