

¹ 5 U.S.C. § 8101 *et seq.*

impingement at C6-7 causally related to an incident in which she assisted in removing tents from a government vehicle and setting up an area related to COVID-19 at the front entrance of her employing establishment. She further related that, afterwards, she sat at her desk typing when she felt a sharp pain in her right shoulder, neck, right arm, and the first three fingers of her right hand. Appellant noted that she first became aware of her condition on August 4, 2020, and realized its relationship to factors of her federal employment on July 10, 2023.

In a report dated November 6, 2020, Dr. Stephen Parker, a Board-certified neurosurgeon, examined appellant for complaints of severe right upper extremity pain with paresthesias. He noted that a magnetic resonance imaging (MRI) scan demonstrated a large right disc herniation at C6-7. Dr. Parker diagnosed a prolapsed cervical intervertebral disc, cervical radiculopathy, and cervical spinal stenosis. He recommended an anterior cervical discectomy and fusion at C6-7.

Appellant underwent anterior cervical discectomy and fusion at C6-7 on November 10, 2020.

In a development letter dated July 28, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 60 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding the accuracy of her statement. It afforded the employing establishment 30 days to respond. No additional evidence was received.

In a follow-up development letter dated August 30, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the July 28, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

By decision dated October 2, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted employment factors.

On November 17, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated November 29, 2023, OWCP denied appellant's hearing request, finding that it was untimely filed, pursuant to 5 U.S.C. § 8124(b). It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP, along with the submission of new evidence.

On November 30, 2023 appellant requested reconsideration and submitted additional medical evidence.

An x-ray of the cervical spine obtained on August 26, 2020 demonstrated mild degenerative changes at the C4-6 levels. An x-ray of the right shoulder obtained on the same date was normal.

An electromyography and nerve conduction velocity (EMG/NCV) study obtained on September 29, 2020 revealed abnormal readings including electrodiagnostic evidence of right C6-

7 radiculopathy. The study showed no electrodiagnostic evidence of active denervation and no motor unit action potential morphology changes consistent with chronic injury, likely to be more acute in duration.

An MRI scan obtained on October 2, 2020 demonstrated straightening of the normal cervical lordosis, moderate spondylosis at C4-5 and C5-6, and mild spondylosis at C6-7 in which there was a large right lateral disc herniation causing effacement of the right ventral lateral aspects of the spinal canal.

In a progress note dated January 13, 2021, Dr. Kenneth L. Hill, a Board-certified neurosurgeon, related that, following appellant's November 10, 2020 anterior cervical discectomy and fusion at C6-7, she awoke with complete paralysis of the right upper and lower extremities. Appellant presented with continued right hemiparesis and using a wheelchair with a brace on her right lower extremity. On physical examination of the right upper extremity, Dr. Hill observed 0/5 strength of the bicep and triceps, a shrugging deltoid, no wrist flexion/extension, and no grip or pinching strength, with a flicker of thumb movement. On physical examination of the right lower extremity, he observed slight flickering of the quadriceps and hamstring with zero ankle dorsiflexion and plantar flexion. Appellant's right upper and lower extremities felt numb. Examination of the cervical spine demonstrated posterior midline tenderness. Dr. Hill diagnosed status post cervical spine fusion, right hemiparesis, paresthesias, deep vein thrombosis of the bilateral lower extremities, and pulmonary embolism. He noted that he still did not have an explanation for her right hemiplegia/hemiparesis based on clinical imaging and recommended updated MRI scans of the cervical spine and brain.

By decision dated February 5, 2024, OWCP denied modification of its October 2, 2023 decision.

On September 20, 2024 appellant requested reconsideration and submitted additional evidence.

In a report dated September 11, 2024, Dr. Thomas Hemingway, Board-certified in emergency medicine, examined appellant for right-sided paralysis and left-sided swelling and pain. He reviewed appellant's history of injury, noting that appellant had worked for the employing establishment since 2014 and became a supervisor in 2016. Dr. Hemingway stated that on the morning of August 4, 2020, appellant was instructed to set up, break down, and move tents for COVID-19 testing. While she carried one of the tents from a government vehicle to where a testing station was being set up, appellant felt a sharp pain and lost sensation in her right arm. An MRI scan obtained in October 2020 demonstrated a ruptured herniated disc interfering with a right-sided nerve root. Appellant underwent surgery on November 10, 2020, and after waking up from surgery, she was paralyzed on the right side. Dr. Hemingway noted that during her stay in the hospital, she sustained a pulmonary embolism and contracted COVID-19. He noted that appellant required significant assistance with activities of daily living. Dr. Hemingway diagnosed cervical disc displacement, cervical radiculopathy, spinal cord disease, and neuromuscular dysfunction of the bladder.

Dr. Hemingway opined that when appellant picked up a heavy tent on August 4, 2020, she placed sudden excessive strain to her neck's cervical discs at C6-7, causing the disc to rupture and subsequently protrude into the neural foramina. He explained the pathophysiology of a cervical disc protrusion that ruptures or herniates into neural foramina and compresses the exiting nerves,

stating that in appellant's case, this pathophysiology led to localized sharp neck pain, muscle weakness and numbness; and explained that the protrusion of the disc resulted in continuing weakness of the bicep and triceps by affecting the nerve exiting at C6-7. Dr. Hemingway noted that the ruptured disc that protruded into the foramina at C6-7 impaired appellant's triceps muscle, wrist muscles, and caused decreased sensation in the first three fingers. He noted that after appellant awoke from anterior cervical discectomy and fusion on November 10, 2020, her right upper and lower extremities were partially paralyzed due to nerve involvement and she experienced incontinence due to a neurogenic bladder. Dr. Hemingway opined that appellant's diagnosed cervical disc displacement, cervical radiculopathy, spinal cord disease, and neuromuscular dysfunction of the bladder were a direct result of lifting a heavy object while in the performance of duty on August 4, 2020.

By decision dated September 25, 2024, OWCP denied modification of its February 5, 2024 decision.

On October 16, 2024 appellant requested reconsideration. She submitted an October 25, 2024 update to Dr. Hemingway's September 11, 2024 report, which described the August 4, 2020 incident in additional detail. Dr. Hemingway related that, on that date, appellant and a coworker were setting up outdoor tents for healthcare workers in response to COVID-19. They removed large tents from the back of a government-owned vehicle. Appellant reached into the vehicle, stretching to pull the tents toward her, as they were positioned far from the rear opening. As she began to pull the tent, she realized how heavy it was and stopped. When appellant tried to pull it again, she felt an initial pain. Multiple attempts were made to bring the first tent closer to the edge of the vehicle for lifting, and a second tent was also moved. Once the first tent was at the edge of the vehicle, appellant and her coworker tried to lift it onto their right shoulders to carry it to the front entrance. As they lifted the tent, her coworker dropped her side due to the weight, causing appellant also to have to drop it to her side. They were able to pick up the tent a second time and carried it into the building, placing it under stairs to the left of the front entrance. They then followed the same process for the second tent, but chose not to lift it onto their shoulders due to its weight. Appellant estimated that each tent weighed between 100 and 150 pounds. Dr. Hemingway noted that there was some initial confusion as to the events that occurred on the August 4, 2020, and that after speaking to her again, she provided this account of events. Later that evening, as appellant was sitting at her desk typing, she felt a sharp pain that started at her neck and radiated down her right arm to the first three fingers of the right hand. The next morning after awakening, she was unable to move her right arm, and the first three fingers of her right hand were numb.

By decision dated December 17, 2024, OWCP denied modification of its September 25, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Supra* note 1.

United States within the meaning of FECA,³ that the claim was timely filed within the applicable time limitation of FECA, 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, 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.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 decision.

Appellant filed an occupational disease claim (Form CA-2) on July 27, 2023 alleging that she sustained cervical strain, nerve damage, numbness and tingling of the first three digits of the right hand, and herniated disc nerve impingement at C6-7 causally related to factors of her federal employment. She described an August 4, 2020, incident wherein she had assisted in removing tents from a government vehicle and setting up an area related to COVID-19 at the front entrance

³ *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).

⁴ *K.M.*, Docket No. 24-0752 (issued October 16, 2024); *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).

⁵ *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).

⁶ *E.K.*, Docket No. 25-0077 (issued January 21, 2025); *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 *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).

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

⁹ *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 6.

of her employing establishment. Afterwards, appellant sat at her desk typing and felt sharp pain in her neck, right shoulder, right arm, and the first three fingers of her right hand.

A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” An occupational disease is defined as a “condition produced by the work environment over a period longer than a single workday or shift.”¹⁰ While OWCP initially processed her claim as an occupational disease claim, appellant’s Form CA-2 described an incident on August 4, 2020 as the cause of her claimed conditions. Accordingly, the Board finds that appellant’s claim describes the circumstances of a traumatic injury rather than an occupational disease.¹¹

In a report dated September 11, 2024, Dr. Hemingway related that, on the morning of August 4, 2020, appellant was instructed to set up, break down, and move tents for COVID-19 testing. While she carried one of the tents, appellant felt a sharp pain and lost sensation in her right arm. In an October 25, 2024 update to Dr. Hemingway’s September 11, 2024 report, Dr. Hemingway stated that, on August 4, 2020, appellant and a coworker were setting up outdoor tents for healthcare workers in response to COVID-19. They removed large tents from the back of a government-owned vehicle. Appellant reached into the vehicle, stretching to pull the tents towards her as they were positioned far from the rear opening. As she began to pull the tent, she realized how heavy it was and stopped. When appellant tried to pull it again, she felt an initial pain. Multiple attempts were made to bring the first tent closer to the edge of the vehicle for lifting and a second tent was also moved. Once the first tent was at the edge of the vehicle, appellant and her coworker tried to lift it onto their right shoulders to carry it to the front entrance. As they lifted the tent, her coworker dropped her side due to the weight, causing appellant also to have to drop it to her side. They were able to pick up the tent a second time and carried it into the building, placing it under stairs to the left of the front entrance, and followed the same process for the second tent, but chose not to lift it onto their shoulders due to its weight. Appellant estimated that each tent weighed between 100 and 150 pounds. Dr. Hemingway noted that there was some initial confusion as to the events that occurred on August 4, 2020, and that after speaking to appellant again, she provided this account of events. Later that evening, as she was sitting at her desk typing, she felt a sharp pain that started at her neck and radiated down her right arm to the first three fingers of the right hand. The next morning after awakening, she was unable to move her right arm, and the first three fingers of her right hand were numb.

In both the September 11, 2024 report and the October 25, 2024 update, Dr. Hemingway opined that when appellant picked up a heavy tent on August 4, 2020, she placed sudden excessive strain to her neck’s cervical discs at C6-7, causing the disc to rupture and subsequently protrude into the neural foramina. He explained the pathophysiology of a cervical disc protrusion that ruptures or herniates into neural foramina and compresses the exiting nerves, stating that in appellant’s case, this pathophysiology led to localized sharp neck pain, muscle weakness and numbness; and explained that the protrusion of the disc resulted in continuing weakness of the bicep and triceps by affecting the nerve exiting at C6-7. Dr. Hemingway noted that the ruptured disc that protruded into the foramina at C6-7 impaired appellant’s triceps muscle, wrist muscles, and caused decreased sensation in the first three fingers. He noted that after appellant awoke from

¹⁰ 20 C.F.R. §§ 10.5(q), 10.5(ee).

¹¹ See *S.W.*, Docket No. 20-1346 (issued June 23, 2021).

anterior cervical discectomy and fusion on November 10, 2020, her right upper and lower extremities were partially paralyzed due to nerve involvement and she experienced incontinence due to a neurogenic bladder. Dr. Hemingway opined that appellant's diagnosed cervical disc displacement, cervical radiculopathy, spinal cord disease, and neuromuscular dysfunction of the bladder were a direct result of lifting a heavy object while in the performance of duty on August 4, 2020.

The Board finds that Dr. Hemingway's opinion, while insufficient to establish the claim, is sufficient to require further development of the medical evidence.¹²

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹³ It has an obligation to see that justice is done.¹⁴

The case shall therefore be remanded to OWCP for further development of the medical evidence. On remand OWCP shall convert appellant's claim to a traumatic injury claim. Further, it shall refer appellant, along with a statement of accepted facts, the medical record, and a series of questions to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether appellant has a diagnosed condition causally related to the accepted August 4, 2020 employment incident. If the referral physician opines that the diagnosed condition(s) is/are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Hemingway. Following this and other such 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.

¹² See *M.J.*, Docket No. 24-0800 (issued November 7, 2024); *J.M.*, Docket No. 22-0916 (issued September 30, 2024); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *Id.*

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2024 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: April 16, 2025
Washington, DC

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

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

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